A N N U A L R E P O R T

of the

LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

FOR THE YEAR

1 9 8 5

LABOUR RELATIONS BOARD OF B.C.
1275 WEST 6TH AVENUE, VANCOUVER, B.C. V6H 1A6 / 660-1300

LETTER OF TRANSMITTAL

February 28, 1986

The Honourable Terry Segarty
The Minister of Labour
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Minister:

As provided in Section 151 of the Labour Code, I have the honour to submit herewith the twelfth Annual Report for the Labour Relations Board of British Columbia for the year ended December 31, 1985.

Yours very truly,

John Kinzie

John Kinzie,
Chairman

LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

MEMBERS

(as of December 31, 1985)

John Kinzie	Chairman
Kenneth E. Albertini	Vice-Chairman and Registrar
Angus Macdonald	Vice-Chairman
Alex G. Markides	Vice-Chairman
Shona A. Moore	Vice-Chairman
Bryan E. Williams	Vice-Chairman
Wayne Moore	Vice-Chairman
Michael H. Davison	Vice-Chairman
John B. Hall	Vice-Chairman
Richard S. Longpre	Vice-Chairman

Clarence J. Alcott	Thomas A. Kirk
John Macdonald Billings	James Lippert
Jack Butterworth	James R. McAvoy
Daniel J. Closkey	Nora A. Paton
Derek Doubleday	Anthony J. Poje
Herbert Lowell Fritz	Douglas G. Quinn
Roland B. Gordon	M. Lloyd Sim
Doris Hanson	John C. Todman
Jack Kerssens	H. Henry Volkmann

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I. INTRODUCTION

Under the Labour Code, R.S.B.C. 1979, c.212, the Labour Relations Board is directed to report annually to the Minister on its activities. Section 151 states:

> 151(1) The board may report to the minister, and shall report to the minister on his request and the minister may authorize the board to publish its report.
>
> (2) The board shall, on or before March 1 each year, make a report to the minister for the preceding calendar year, setting out briefly
>
> (a) all applications to the board under this Act and summaries of the findings of the board on them;
>
> (b) other matters the board considers to be of public interest in the discharge of its duties under this Act; and
>
> (c) other information the minister directs.
>
> (3) The report referred to in subsection (2) shall be laid before the Legislature if it is then in session; otherwise the report shall be laid before the Legislature within 15 days after the opening of the next ensuing session.

This requirement for a separate report by the Board reflects the creation under Part 2 of the Code of a labour board whose structure and wider responsibilities are distinct from those of labour boards created under previous legislation. In this twelfth Annual Report on the Board's activities, we will follow the same basic format as was used in previous reports, dealing first with the main events affecting the Board during the past year, and then with the workload and pattern of decisions of the Board in the various areas of its responsibility in 1985. As well, we will recall certain events which highlighted labour-management relations in B.C. in 1985, and which were manifested in proceedings before the Labour Relations Board.

II. PERSONNEL

At the commencement of the report year, the complement of the Board was thirty-four, composed of the Chairman: John Kinzie; nine Vice-Chairmen: Angus Macdonald, Kenneth E. Albertini, Peter R. Sheen, J. Dale Michaels, Bryan E. Williams, Shona A. Moore, Alex G. Markides, Wayne Moore and Michael H. Davison; and twenty-four part-time Members: Clarence J. Alcott, Daniel John Bell, John Macdonald Billings, John Brown, Jack Butterworth, Daniel J. Closkey, Derek Doubleday, Herbert Lowell Fritz, Irvin Froese, Roland B. Gordon, Doris Hanson, Jack Kerssens, Thomas A. Kirk, James R. Lippert, James R. MacAvoy, Jack A. Moore, Nora A. Paton, Anthony J. Poje, Douglas G. Quinn, Lloyd Sim, John L. Star, John C. Todman, T. Wyman Trineer, and H. Henry Volkmann.

During 1985, there were several changes in the composition of the Board which resulted in a complement of 28 at the end of the report year. Peter Sheen left the Board as a Vice-Chairman on June 14, 1985 to return to private practice. Peter Sheen had served as a Vice-Chairman from June 14, 1982. J. Dale Michaels resigned as a Vice-Chairman on October 31, 1985 to take up an executive position with B.C. Transit. Dale Michaels had served as a Vice-Chairman from December 3, 1982. John Hall was appointed a Vice-Chairman on June 1, 1985 and Richard Longpre was appointed a Vice-Chairman on June 17, 1985.

Calvin B. Davis resigned as a part-time Member of the Board in September 1985 to take up a position as a member with the Canada Labour Relations Board. Daniel John Bell and T. Wyman Trineer's appointments as part-time Members expired on March 30, 1985 and Irvin Froese's appointment expired on December 2, 1985.

The Board lost two long-time members during 1985 -- Jack A. Moore and John Brown both died during the year. Jack Moore was one of the original Vice-Chairmen from October 2, 1973 until 1980 and served the labour relations community as a part-time Member of the Board from October 2, 1980 until his death on November 14, 1985. John Brown was an early part-time Member appointed to the Board on January 14, 1974 and served until his death on December 24, 1985. The labour relations community will miss the hard work and dedication of these two men.

As of December 31, 1985, there were 28 appointed members, while the administrative and legal staff numbered 41.

Section 22 of the Code requires that the principal office of the Board be at or near Vancouver, the central location for labour relations activities within the Province. The Board's offices have been located at 1275 West 6th Avenue, in the City of Vancouver, since October 26, 1979.

III. RESPONSIBILITIES OF THE BOARD

The history and details of the Board's responsibilities under the Labour Code and the British Columbia Labour Relations Board Regulations were extensively discussed in the 1974 Annual Report. The 1975 Report presented three Tables providing: a historical record of the Labour Code and its amendments (Table A); statutes conferring authority on the Board (Table B); and the Regulations made pursuant to the Code (Table C). In 1977, a new table was added setting out those statutes which affect the Board's authority (Table D).

In the 1980 Report only, a brief table of concordance had been included to indicate changes in titles and chapter designations of the statutes listed in Tables A to D, as a consequence of the proclamation of the Revised Statutes of British Columbia (R.S.B.C.) 1979. This revision and consolidation of the Public General Acts of British Columbia included certain changes in the title, language and structure of the Labour Code, as well as in many other public acts of British Columbia. The stated purpose of these changes was to provide a more uniform mode of expression in the public statutes and not for the purpose of effecting substantive changes in the law. Some pre-1979 statutes listed in Tables A to D were not included in the R.S.B.C. 1979 consolidation (they were indicated in Table E of the 1980 Report as "not consolidated"). Despite their absence from the consolidated statutes, these acts remain in full force and effect until repealed.

In addition to its mandate under the Labour Code, the Board has been charged with responsibility in labour relations matters under fourteen other statutes (Table B). By virtue of the Public Service Amendment Act, 1980, S.B.C. 1980, c.46, that

part of the Public Service Act establishing the Public Service Adjudication Board, its jurisdiction and the right of parties to appear before it has now been repealed. The transitional provisions in Section 8 of the Public Service Amendment Act, 1980 allow the parties to decide how matters which were previously before the Public Service Adjudication Board are to be completed; in the absence of agreement, that Section allows for the disposition of those matters in accordance with Part 6 of the Labour Code. As a result, the Labour Relations Board has now assumed the general superintendency of the public service arbitration process and matters which previously fell within the jurisdiction of the Public Service Adjudication Board will now be heard by arbitrators on the panel of arbitrators in respect of the collective bargaining relationship between the Government of British Columbia and the British Columbia Government Employees' Union.

TABLE A

STATUTORY HISTORY OF THE LABOUR CODE

(1) THE LABOUR CODE

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code, R.S.B.C. 1979, c.212 (formerly Labour Code of British Columbia, S.B.C. 1973, (2nd Sess.), c.122)	November 13, 1973 Proclamation	12, 26, 124, 139, 140, 150	Reg. 424/74, Pt. II, V. 16, p.645
	December 20, 1973 Proclamation	21, 55	Reg. 12/74, Pt. II, V. 17, p.158
	January 14, 1974 Proclamation	1-11, 13-20, 22-25, 27-30, 32-54, 56, 59-69, 73, 92-112, 122, 123, 125-127, 138, 141-149, 150A, 151(a), 152	Reg. 41/74, Pt. II, V. 17, p.192
	January 24, 1974 Proclamation	70-72	Reg. 53/74, Pt. II, V. 17, p.195
	March 1, 1974 Proclamation	74-78	Reg. 154/74, Pt. II, V. 17, p.407
	March 14, 1974 Proclamation	113-121A	Reg. 174/74, Pt. II, V. 17, p.433
	August 15, 1974 Proclamation	57, 58	Reg. 578/74, Pt. II, V. 17, p.949
	September 2, 1974 Proclamation	31, 79-91	Reg. 606/74, Pt. II, V. 17, p.998
	September 16, 1974 Proclamation	151(b) and (c)	Reg. 682/74, Pt. II, V. 17, p.1116

TABLE A (cont.)

STATUTORY HISTORY OF THE LABOUR CODE

(2) AMENDING ACTS

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Statute Law Amendment Act, 1974, S.B.C. 1974, c.87, s.22	October 14, 1974 Proclamation	22(a) (among others)	Reg. 709/74 Pt. II, V. 17, p.1158
	June 20, 1974 Royal Assent	22(b) - 22(i) (among others)	N/A
Essential Services Continuation Act, S.B.C. 1974, c.108, s.6	August 9, 1974 Royal Assent	6 (among others)	N/A
Elevator Construction Industry Labour Disputes Act, S.B.C. 1974, c.107, s.6	November 26, 1974 Royal Assent	6 (among others)	N/A
Labour Code of British Columbia Amendment Act, 1975, S.B.C. 1975, c.33	June 26, 1975 Royal Assent	1-6, 8-33	N/A
	January 14, 1974 Retroactive Effect	7	N/A
Labour Code of British Columbia Amendment Act, 1976, S.B.C. 1976, c.26	June 30, 1976 Royal Assent	1-8	N/A
Miscellaneous Statutes Amendment Act, 1976, S.B.C. 1976, c.32	July 8, 1976 Proclamation	12A	Reg. 391/76, Pt. II, V. 19, p.511
Labour Code of British Columbia Amendment Act, 1977 S.B.C. 1977, c.72	September 27, 1977 Royal Assent	1-12	N/A

TABLE A (cont.)

STATUTORY HISTORY OF THE LABOUR CODE

(2) AMENDING ACTS

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Ministerial Titles Amendment Act, S.B.C. 1977, c.75	October 21, 1977 Proclamation	Sch. I, Ss. 8(2), 127(3), 129(a) 136, 137(1)(a)	N/A
Essential Services Disputes Act, S.B.C. 1977, c.83	October 28, 1977 Proclamation	19 repeals 73(1) to (6)	N/A
Miscellaneous Statutes Amendment Act, 1978, S.B.C. 1978, c.28	July 6, 1978 Proclamation	11 amends 69	N/A
Financial Administration Act, S.B.C. 1981, c.15	November 26, 1981 Proclamation	117 repeals 139(2)	Reg. 468/81, Pt. II, V. 24, p.981
Court of Appeal Act, S.B.C. 1982, c.7	September 7, 1982 Proclamation		Reg. 302/82, Pt. II, V. 25, p.428
Labour Code Amendment Act, 1982, S.B.C. 1982, c.59	August 4, 1982 Proclamation		Reg. 354/82, Pt. II, V. 25, p.564
Regulations Act S.B.C. 1983, c.10	October 26, 1983 Regulation	21, 25 and Schedules 2 and 16 amend 21(2), 29(1)(a), (b), 29(2), 35(c), 42(2), 59(2), 60(c), 61(2), 73(1)(a), 75, 81(5)(a), (6), 142(1), 154	Reg. 393/83, Pt. II, V. 26 p.607
Labour Code Amendment Act, 1984, R.S.B.C. 1984, c. 24	June 8, 1984 Regulation	1-19 except 13	Reg. 167/84, Pt. II, V.27, p. 221
	August 27, 1984 Regulation	13	Reg. 274/84, Pt. II, V.27, p.358

TABLE B

STATUTES CONFERRING AUTHORITY ON THE LABOUR RELATIONS BOARD

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code Amendment Act, 1984, R.S.B.C. 1984, c.24	June 8, 1984 Regulation	1-19 except 13	Reg. 167/84, Pt. II, V. 27, p.221
	Aug. 27, 1984 Regulation	13	Reg. 274/84, Pt. II, V. 27, p. 358
Labour Code, R.S.B.C. 1979, c.212	Refer Table A	1-127, 138-154	
Public Service Labour Relations Act, R.S.B.C. 1979, c.346	January 3, 1974 Proclamation	1-14, 17-28 (amendments to ss. 4, 11 and 17 yet to be proclaimed)	Reg. 14/74, Pt. II, V. 17, p.160
Assessment Authority Act, R.S.B.C. 1979, c.22	June 20, 1974 Royal Assent	21 (among others)	N/A
Institute of Technology Act, R.S.B.C. 1979, c.199	July 4, 1974 Proclamation	7	Reg. 485/74, Pt. II, V. 17, p.788
Community Resource Board Act, R.S.B.C. 1979, c.58	November 21, 1974 Proclamation	4	Reg. 781/74, Pt. II, V. 17, p.1209
Elevator Construction Industry Labour Disputes Act, S.B.C. 1974, c.107	November 26, 1974 Royal Assent	3, 5 (among others)	N/A
Hospital Services Collective Agreement Act, S.B.C. 1976, c.21	June 9, 1976 Royal Assent	7 (among others)	N/A
Ferry Corporation Act, R.S.B.C. 1979, c.128	June 30, 1976 Royal Assent	23 (among others)	N/A

TABLE B (cont.)

STATUTES CONFERRING AUTHORITY ON THE LABOUR RELATIONS BOARD

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Railway and Ferries Bargaining Assistance Act, S.B.C. 1976, c.48	June 15, 1976 [s.22(1)] Royal Assent on June 14, 1976	Part II (6-14)	N/A
	February 3, 1977 Proclamation	1, Pt. I (2-5)	Reg. 44/77, Pt. II, V. 20, p.198
	October 6, 1977 Proclamation	Part II (19, 20)	Reg. 422/77
B.C. Buildings Corporation Amendment Act, 1977, S.B.C. 1977, c.32	August 18, 1977 Royal Assent	16A (among others)	N/A
System Act, R.S.B.C. 1979, c.399	September 1, 1977 Proclamation	17 (among others)	Reg. 349/77, Pt. II, V. 20, p.665
Essential Service Disputes Act, R.S.B.C. 1979, c.113	October 28, 1977 Proclamation	1-18 (and schedule)	Reg. 465/77, Pt. II, V. 20, p.853
College and Institute Act, R.S.B.C. 1979, c.53	October 10, 1978 Proclamation	30(8)	Reg. 463/78, Pt. II, V. 21, p.1219
	December 15, 1977 Proclamation	42 (among others)	Reg. 607/77, Pt. II, V. 21, p.357
West Kootenay Schools Collective Bargaining Assistance Act, S.B.C. 1978, c.42	December 9, 1978 Royal Assent	10 (among others)	N/A
	January 15, 1979 Proclamation	11	Reg. 8/79, Pt. II, V. 22, p.130
Public Service Amendment Act, S.B.C. 1980, c.46	August 21, 1980 Royal Assent	6-8 (among others)	N/A

TABLE B (cont.)

STATUTES CONFERRING AUTHORITY ON THE LABOUR RELATIONS BOARD

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Pulp and Paper Collective Bargaining Assistance Act, S.B.C. 1984, c.10	March 30, 1984 Royal Assent	1-14	N/A
	Sept. 28, 1984 repealed by Regulation		Reg. 294/84, Pt. II, V. 27, p. 476
Metro Transit Collective Bargaining Assistance Act, S.B.C. 1984, c.33	Sept. 14, 1984 Royal Assent	1-12	N/A
British Columbia Railway Dispute Settlement Act, S.B.C. 1985, c. 21	May 16, 1985 Royal Assent	1-11	N/A

TABLE C

REGULATIONS UNDER THE LABOUR CODE*

Effective Date	Regulation No.	B.C. Gazette References
December 28, 1973	1-36	Reg. 522/73 Pt. II, V. 17, p.26
March 14, 1974	Amending Reg. 522/73	Reg. 162/74, Pt. II, V. 17, p.410
September 4, 1974	37-43	Reg. 601/74, Pt. II, V. 17, p.968
November 28, 1974	Amending Reg. 601/74 and 522/73	Reg. 786/74 Pt. II, V. 17, p.1202
September 24, 1975	44	Reg. 616/75, Pt. II, V. 18, p.861
December 22, 1976	45-47	Reg. 667/76, Pt. II, V. 20, p.100
March 1, 1978	48-79	Reg. 39/78, Pt. II, V. 21, p.437
August 19, 1978	80	Reg. 380/78, Pt. II, V. 21, p.1074
November 27, 1979	17(2)	Reg. 541/79, Pt. II, V. 22, p.1091
June 13, 1984	Amending Reg. 522/73	Reg. 182/84, Pt. II, V. 27, p.224

* The Lieutenant-Governor in Council is empowered by Section 150 of the Labour Code to make regulations and orders for the purpose of carrying out the provisions of the Act according to their intent. The regulations are cited as the British Columbia Labour Relations Board Regulations.

TABLE D

STATUTES AFFECTING LABOUR CODE

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
University Act, R.S.B.C. 1979, c.419	October 7, 1977 Proclamation of s.38, Miscellaneous Statutes Amendment Act, 1977, S.B.C. 1977, c.76	80	Reg. 434/77, Pt. II, V. 20, p.767

IV. AMENDMENTS TO THE CODE

The greatest part of the Board's workload is generated by proceedings under the Labour Code. The Code was first enacted in 1973 and proclaimed in force in several stages throughout 1974. Since that time, it has been revised and clarified through various amendments. Some of these involve major substantive changes while others were purely technical refinements. Extensive revisions were made in the Amendment Act of 1975 (Bill 84), 1976 (Bill 77) and 1977 (Bill 89). Both substantive and technical revisions (described in the 1982 Annual Report) were made to the Code in the Labour Code Amendment Act, 1982, S.B.C. 1982, c.59. A number of technical revisions were made to the Code in the Regulations Act, S.B.C. 1983, c.10.

The Labour Code Amendment Act, 1984, which came into force on June 8, 1984, altered many sections of the Code, making major changes along with some technical refinements. One of the substantial alterations made was to the certification procedure under the Code. The old Sections 43, 44 and 45 were repealed and replaced by a new Section 43. Expedited procedures were implemented by the Board in carrying out its mandate under this Section. Those procedures are outlined in the section on Practice and Procedure in the 1984 Annual Report. The amendments in addition set up a special certification procedure for the construction industry in Section 45.

Parallel with the certification provisions were the 1984 amendments made to the decertification provisions of the Code.

Following the experience in labour disputes, amendments were made in 1984 in the area of strikes and picketing.

With respect to the law of picketing, the old Sections 85 and 86 were repealed and replaced by a new Section 85. The main change implemented by this new section is the restriction of a union's right to picket without authorization to those locations set out in Section 85(3), i.e., "at or near a site or place where a member of the trade union is locked out or lawfully on strike". In addition, a union may apply pursuant to Section 85(4) for the right to picket certain other locations.

The Labour Code Amendment Act, 1984 also enacted a new Section 5 which explicitly deals with employee rights with respect to fair and reasonable conditions of membership in a union. The Board is now given the power to determine whether penalties or conditions of membership in a union are imposed for a cause that is fair and reasonable.

Finally, the amendments created a section dealing with Economic Development Projects. The Lieutenant Governor in Council is granted the power to designate certain economic projects, or parts of these projects, which he considers to be of special economic importance, to constitute a separate economic development project for periods which he specifies.

There were no amendments to the Act during 1985.

V. HIGHLIGHTS

A. Alteration of Terms and Conditions of Employment After Expiry of a Collective Agreement

In British Columbia Hydro & Power Authority -and- International Brotherhood of Electrical Workers -and- Paccar of Canada Ltd. (Canadian Kenworth Company Division) -and- Canadian Association of Industrial, Mechanical and Allied Workers, BCLRB No. 284/85, the Board addressed important issues concerning the terms and conditions of employment subsequent to the expiry of a collective agreement. The decision concerned two applications which raised the same issue as to whether an employer, after the expiry of a collective agreement between it and the trade union representing its employees, was entitled to alter unilaterally the terms and conditions of employment of its employees.

In the first application, B.C. Hydro and the IBEW had a collective bargaining relationship for approximately thirty years in which time, notwithstanding the absence of a bridge clause, where there had been a hiatus between agreements, the practice of the parties had been to govern themselves in accordance with the terms and conditions of the most recently expired collective agreement. This practice changed with the expiry of the 1981/83 collective agreement. Upon the expiry of this collective agreement, grievances resulted when certain employees were affected by B.C. Hydro's post expiry refusal to apply those terms that it had announced it would not be bound by. This refusal occurred while B.C. Hydro employees continued to work as usual subsequent to the expiry of the agreement, but prior to the commencement of any strike action. Although the merits of the grievances were subsequently settled, the parties asked an arbitration board to deal with the issue of whether B.C.

Hydro was entitled to make the unilateral alterations to employment that it had made having regard to all the circumstances of the case. The arbitration board, after noting that there was no suggestion of unfair labour practices, ruled in favour of B.C. Hydro. As a result, the IBEW applied to the Labour Relations Board pursuant to Section 108 of the Labour Code requesting that the Board set aside the decision of the arbitration board.

In the second application, Paccar and CAIMAW were parties to a collective agreement from May 1, 1980 to April 30, 1983. In early 1983, negotiations for a new collective agreement commenced but did not go well. In June, 1983, Paccar gave notice to discontinue the negotiations and noted that it considered the collective agreement terminated. It went on to set out terms and conditions of employment which would be in effect on the termination of the collective agreement. In an application before the Board for declarations that the employer had failed to comply with the collective agreement alleged to be in force between it and the union, and had engaged in an unlawful lockout, the Board determined that the employer had successfully terminated the collective agreement and had the authority to make the unilatural changes to the employees' terms and conditions of employment. CAIMAW appealed this decision.

The IBEW and CAIMAW argued that these conclusions were wrong as when a collective agreement expired, individual contracts of employment resume operation between the employer and employees, the terms and conditions of which were the terms and conditions of the just expired collective agreement. The IBEW and CAIMAW maintained that in accordance with general employment law, B.C. Hydro and Paccar had no right to unilaterally alter the terms of those individual contracts. That could only be done by mutual agreement. The IBEW and CAIMAW

also argued that in light of the exclusive bargaining authority granted to the union by the Labour Code, the employers in their respective cases did not have the authority to alter terms and conditions of employment without the agreement of the respective trade unions.

The Board dismissed the appeals noting that it did not agree with all of the reasoning in the two decisions but did agree with the ultimate conclusions. The Board concluded that an employer has the authority under the Labour Code to make unilateral alterations to terms and conditions of employment after the expiry of the collective agreement, subject to his duty and obligation to bargain in good faith and make every reasonable effort to conclude a collective agreement or a renewal or revision of it.

The Board concluded that it was no longer appropriate to speak of individual contracts of employment and common law principles flowing therefrom in respect of an employer/employee relationship which is governed by the Labour Code. That premise, the Board found to be inconsistent with the scheme of the Labour Code as a whole. The Board set out its conclusions as follows:

> "...We are of the view that the comments of Chief Justice Laskin [in McGavin Toastmaster Ltd. (1975), 54 D.L.R.(3d) 1 (S.C.C.)] concerning the inapplicability of individual contracts of employment and the common law apply regardless of whether a collective agreement is in force. This conclusion flows from the fundamental change brought about by the certification of a trade union to represent a group of employees in a bargaining unit. Once certified, that union has the exclusive authority to bargain on behalf of and bind the employees in the unit. The individual employee has no authority to bargain on his own behalf

> whether a collective agreement is in force or not. In these circumstances, it does not make sense to speak of individual contracts of employment at any time. Individual employees may no longer make contracts regarding terms and conditions of employment; only the trade union may. Further, it no longer makes sense to speak of the common law. The collective bargaining relationship is governed by the provisions of the Labour Code, not the common law."
>
> (at 28)

The Board then concluded that when an employer makes unilateral alterations to terms and conditions of employment after raising the proposed alterations in negotiations with the union and the union has rejected the proposals, he is not bypassing the union and does not offend the union's exclusive bargaining authority in doing so. In these circumstances, the employer has attempted to use the union as the avenue through which to implement the changes.

The Board then summarized its conclusions as follows:

> " With the approaching expiry of a collective agreement, the employer and the trade union are required by the provisions of the Labour Code to meet and bargain in good faith and make every reasonable effort to conclude a renewal of that agreement. See Sections 62, 63 and 6 of the Labour Code. That requirement continues after the expiry of the collective agreement.
>
> After the expiry of the collective agreement, no unilateral alterations to terms and conditions of employment may be made by an employer unless they are done so in compliance with his duty to bargain in good faith with the union. Further, we wish to make it clear that the fact that an employer has made unilateral alterations to his employees' terms and conditions of employment does not extinguish his obligation to continue to bargain in good faith with the trade union and

> make every reasonable effort to conclude a collective agreement.
>
> In the period after the expiry of the collective agreement, where the employer continues to operate and the employees continue to work, it will be implied that the terms and conditions of employment for the employees will continue to be the same as those contained in the just expired collective agreement. This conclusion flows from the scheme of the Labour Code as a whole, but in particular, from the duty to bargain in good faith which limits the 'when' and 'how' of unilateral changes to terms and conditions of employment. It is that scheme, and, in particular, the limits on unilateral action prescribed by the duty to bargain in good faith which requires the initial maintenance of the status quo and the resulting implication of the terms and conditions of employment from the just expired collective agreement."
>
> (at 32)

B. PICKETING: SECTION 85(5) OF THE LABOUR CODE

In Slade & Stewart Ltd., BCLRB No. 64/85, 9 CLRBR (NS) 35, ("Slade & Stewart Ltd., No. 2") the Board for the first time dealt with Section 85(5) of the Code which provides as follows:

> "85. (5) The board may, on application or on its own motion, make an order defining the site or place at which picketing that is permitted by subsection (3), or that is permitted under subsection (4), may take place, and where the picketing is common site picketing the board shall by the order reasonably restrict the picketing to the employer causing the lockout, or whose employees are on strike, or to an ally of that employer."

Section 85(3) provides:

> "85. (3) A trade union, a member or members of which are lawfully on strike or locked out, or a person authorized by the trade union, may picket at or near a site or place where a member of the trade union is locked out or lawfully on strike."

In that case, the Retail Wholesale Union, Local No. 580 was certified for a unit of the Employer's employees including warehousemen and truck drivers. The Employer was a wholesale fruit and vegetable company. Customers of the Employer could have their orders delivered to their places of business. Deliveries took between 15 and 30 minutes to make once the Employer's truck arrived at the customer's door.

After reaching an impasse in collective bargaining, the Employer locked out its employees. The Union had picketed customers' sites while the Employer's truck was there and left when the truck left.

In an earlier decision, Slade & Stewart Ltd., BCLRB No. 317/84, 7 CLRBR (NS) 258 ("Slade & Stewart Ltd., No. 1"), the Board had held that the place where the customer took delivery of the goods from the Employer's delivery truck was subject to lawful picketing under Section 85(3) of the Code. The issue of whether the Union could picket a customer's premises at times when the Employer's delivery truck was not present was not before the Board at that time.

Subsequently, the Union advised the Employer that it intended to picket at customers' locations after the completion of the Employer's delivery. The Employer applied to the Board for a declaration that the Union could not do so and succeeded.

The Board stated:

> " The circumstances are different in this situation from those that exist when the Employer's delivery truck is present and a delivery of goods is being made to the customer. It is to be remembered that the focus of permissible picketing under Section 85(3) is now on the employees and the locations where they perform work for the Employer. At this time, the Employer is not present at the location and the customer is not seeking to do business with him by taking delivery of his goods. If picketing takes place at this time, the effect will be that third parties, including employees, other suppliers, and customers, may be persuaded not to enter the customer's place of business and not to do business with him. The impact of the picketing would fall directly on the customer and only indirectly on the Employer, through pressure that might be brought to bear on him by the customer. The factors that were present and caused the Board to determine that a customer's premises was a "site or place" of permissible picketing while the Employer's delivery truck was present and a delivery of goods was being made, are not present when the truck is absent and a delivery is not being made."
>
> (at 7)

Pursuant to Section 85(5) of the Code, the Board defined the "site or place" at which picketing was permitted under Section 85(3), as being the customer's premises at those times during which the customer was taking delivery of goods from the Employer.

The Board held that Section 85(5) gave it the authority to define the site or place not only in a physical boundary sense, but also in a temporal sense. The Board held that the customer's premises was not a "site or place" of permissible picketing when the Employer's delivery truck was not present at those premises making a delivery.

The second major decision of the Board regarding Section 85(5) was Smithrite Building Maintenance Ltd. and H.A. Simons (International) Ltd., BCLRB No. 229/85. That decision involved two applications for reconsideration, one by Smithrite and one by H.A. Simons. Smithrite was engaged in the business of providing janitorial services. Negotiations to renew the collective agreement between Smithrite and the Service Employees' International Union, Local 244 were unsuccessful and Smithrite locked out its employees. The Union picketed at locations where its members had worked as employees of Smithrite, including the premises of H.A. Simons. Prior to the lockout, a number of employees of Smithrite had worked full time at certain locations of H.A. Simons. Smithrite had applied to the Board to restrict the Union's picketing at the premises of its customers to those times when its employees would normally have worked at those premises but for the lockout.

The original panel of the Board dismissed Smithrite's complaint. It concluded that the Union's picketing was permitted by Section 85(3) of the Code, and that this was not an appropriate case for the Board to exercise its discretion under Section 85(5). It held that there were no special circumstances which would lead it to allow Smithrite to seek a remedy on behalf of its customers.

In a separate application, H.A. Simons applied to the Board pursuant to Section 85(5) of the Code, to restrict the Union's picketing of its premises to the hours between 6:00 p.m. and 7:30 a.m. H.A. Simons was a customer of Smithrite. The normal working hours for Smithrite employees working on H.A. Simons' premises were: Monday to Friday 5:00 p.m. to 6:00 a.m. and twenty-four hours per day on Saturdays, Sundays and holidays. H.A. Simons' client traffic was not being adversely affected by

the picketing. However, as a result of the picketing, certain work by B.C. Telephone Company had not been performed. The original panel of the Board declined to grant the order requested, but did hold that the picketing should be restricted in such a way as to allow for the installation or repair of H.A. Simons' telephone system.

The Board rejected both Smithrite's and H.A. Simons' applications for reconsideration. It held that Section 85(3) of the Code does not itself impose a temporal limitation on picketing. The general power given to the Board under Section 85(5) to limit permissible picketing is a discretionary one. The only mandatory obligation imposed by Section 85(5) is in the case of common site picketing to "reasonably restrict the picketing to the employer causing the lockout, or whose employees are on strike, or to an ally of that employer."

In Slade & Stewart Ltd., No. 2, where the employees were present at customers' locations only on an intermittent basis, the Board exercised its discretion under Section 85(5) to limit the permissible picketing in temporal terms. However, that does not mean that a temporal limitation will be appropriate in every case. Each case will depend on its particular circumstances. Nor does Section 85(5) require that a temporal limitation be imposed on all common site picketing.

Unlike the situation in Slade & Stewart Ltd., No. 2, in this case, the locked out employees worked at Smithrite's customers' locations on a regular on-going basis. Thus, the only location that a Smithrite employee would be entitled to picket would be the customer's place of business. The Board held that a temporal restriction on his picketing at his full-time place of work would not give sufficient recognition to

his, and his union's, right to picket under Section 85(3) of the Code and would not constitute a reasonable restriction within the meaning of Section 85(5).

The Board quoted the following portion from the original panel's decision in the H.A. Simons case:

> "What the Applicant (H.A. Simons) is asking for is an order to restrict the Union's right to picket certain times of the day, that is, to the evening and night. The Applicant is asking for a temporal order rather than a geographical one. The problem with a temporal restriction on picketing in this case is that it would amount to no picketing at those times that the picketing could have any effect. The purpose of the picketing is to communicate to the public and the Applicant certain facts about the labour dispute. The Union is entitled to communicate its message while the Applicant is there. To limit picketing to nights and evenings would have precisely the opposite effect."

The Board went on to state:

> " The Board's jurisdiction and obligation under Section 85(5) in respect of common site picketing is to "reasonably restrict" the picketing to the employer precipitating the dispute. The legislative desire expressed in this portion of Section 85(5) is to protect third parties. Again, what is a reasonable restriction will depend on the facts of each case and will involve a balancing of the interests of the picketing trade union and its members and of the third party. In determining the answer to that question, having in mind the purposes and objects set out in Section 27 of the Labour Code, the Board will want to have evidence regarding such matters as the impact of the picketing on the third party, the various possible means of restricting the picketing having regard to the nature of the third party's business, and the impact of the various possible restrictions on the rights and interests of the picketing trade

> union and its members. In this regard, a relevant factor in the Board's determination will be whether the third party is continuing to do business with the struck or locking out employer during the strike or lockout. If he is, it must be recognized that the picketing trade union and its members are entitled to seek to persuade or attempt to persuade him to cease doing so by means of picketing."
> (at 19)

The Board held that the original panel in the H.A. Simons case undertook such a balancing of interests in determining what was a reasonable restriction on the Union's picketing in that case. The Board also agreed with the original panel's conclusion in the Smithrite case that the Board will not normally grant relief in common site picketing cases on the application of the struck or locking out employer. The common site picketing provisions exist for the protection of the third parties' interests and the Board will expect those third parties to assert those interests where they are affected by picketing which is permitted by Section 85(3).

VI. PRACTICE BEFORE THE BOARD: PROCEDURAL MEMORANDA

On February 20, 1985 the Board issued a procedural memorandum setting out the results of a review that was undertaken by the Board due to concerns about delay in proceedings at the Board. The memorandum dealt specifically with Sections 36 and 108 applications, Section 7 complaints and hearings. A summary of this memorandum follows:

1. Section 36 and Section 108 Applications

The parties to proceedings at the Board are reminded of the requirement in respect of both Section 36 and Section 108 applications that the initiating application must set out clearly those features of the earlier decision which would justify the Board exercising its discretion to review the decision, as well as a detailed argument on the merits concerning the reasons why the earlier decision should be overturned.

The Board will be reviewing the initiating application closely, and if on its face it does not disclose a case which would justify the Board exercising its discretion to review the earlier decision, the application may be dismissed similarily without inviting submissions from the other parties. If the Board concludes that the initiating application raises an arguable issue, written submissions may be sought from the other parties, or the matter may be set down for hearing.

As well, in appropriate cases, other steps may be taken such as the publishing of shorter decisions in respect of applications determined to be without any merit to endeavour to reduce the delay which is occuring in the processing of Section 36 and Section 108 applications.

2. Section 7 Complaints

Having considered the delay caused by the number of Section 7 complaints, the Board has

decided to discontinue its expedited procedure for Section 7 complaints involving terminations or long-term layoffs. All Section 7 complaints will henceforth be processed in accordance the Board's standard Section 8 procedures. The primary affect of this change is that Section 7 complaints involving terminations or long-term layoffs will not automatically go to a formal hearing. That decision, as with other Section 7 complaints, will rest with the panel of the Board to whom the complaint is assigned.

Further, the Board has concluded that there continues to be a lack of understanding in some segments of the community about what Section 7 really means and the scope of the Board's jurisdiction under it. To assist in clarifying these matters, the Board has published a formal policy statement pursuant to Section 27 of the Labour Code regarding Section 7, as well as a shorter layman's guide to the meaning of the Section. The layman's guide is in the form of a pamphlet entitled "The Duty of Fair Representation-- What Does it Mean?" and is available to union members on request from the Labour Relations Board.

3. Hearings

Members of the labour relations community are reminded of the initiatives contained in the July 13, 1983 practice note published in the 1983 Annual Report. In addition, two new initiatives have been adopted. First, all hearings will be scheduled to commence at 9:00 a.m. on the first day, 9:30 a.m. thereafter. During the period 9:00 a.m. to 9:30 a.m. on the first day, the panel may wish to meet with the principal parties to the dispute and their counsel. The purpose of this meeting will be to discuss matters relating to the hearing with a view to ensuring the hearing proceeds as expeditiously as possible. As well, in appropriate cases and in an appropriate manner, possibilities for settlement of the dispute may be canvassed with the parties.

Second, the Board requests that all counsel to a proceeding make opening statements to the panel setting out their positions in respect to the dispute, prior to any evidence being called. The

Board believes this will assist in the hearing proceeding more smoothly and expeditiously. Further, these statements may disclose to the parties and to the panel potential areas for resolving the dispute informally.

The Board requested comments on how these changes are working and any other suggestions that the Labour Relations Community may have with respect to improving the Board's practice and procedures.

On June 28, 1985 the Board issued a policy statement with respect to Section 7(1) of the Labour Code. The policy statement was prepared with two objectives in mind. First, to assist those individuals, unions and employers involved in Section 7(1) proceedings who do not have the benefit of legal representation. The second objective is to summarize the conclusions reached in many board decisions regarding the scope of Section 7(1) and the meaning of the words "arbitrary", "discriminatory" and "bad faith". A summary follows:

1. <u>The Scope of Section 7(1)</u>

To ensure that unions meet a minimum standard in representing the employees in a unit, Section 7(1) imposes an obligation not to act in a manner that is arbitrary, discriminatory or in bad faith. Under Section 7(1), the Board will not objectively review the merits of every union decision in order to determine whether it agrees with it as Section 7(1) permits only a very limited review. The duty established by Section 7(1) does not require the union to be right in the decision in which it makes. A union's duty pursuant to Section 7(1) is discharged when it has avoided acting in a manner that is arbitrary, discriminatory or in bad faith.

It is important to keep in mind that an employee does not have an absolute right to have his grievance taken to arbitration. Sometimes the union, in balancing the interests of a grievor against the interests of other employees, or the bargaining unit as a whole, must subjugate the interests of the individual employee to those of

others. Section 7(1) has been interpreted by the Labour Relations Board as providing a union with considerable latitude in the way it deals with employees complaints and grievances. Even in the case of an employee's discharge, there is no absolute requirement that the union process the discharge grievance to arbitration.

The duty arising from Section 7(1) also covers contract negotiations. However, in applying Section 7(1) to a union's conduct during collective bargaining, the Board takes a very restrained approach. Not all the interests of all the employees in the bargaining unit can be satisfied in any set of negotiations. Accordingly, the Board is very reluctant to second-guess union negotiators.

By virtue of the 1984 Code amendments, the Board is now empowered, pursuant to Section 5, to inquire into various intra-union matters. The Board's approach to Section 5 complaints will be developed on a case-by-case basis.

2. What is Arbitrary Conduct?

A trade union acts in an arbitrary way when it handles an employee's problems in a manner that is perfunctory, superficial or indifferent. When a trade union acts capriciously, gives only superficial attention to a matter or acts with a reckless disregard for an employee's interests, it is acting in a manner which is arbitrary and in violation of Section 7(1).

Where a union makes no effort to discover the circumstances surrounding a grievance or its possible merits, a refusal to proceed with the grievances is arbitrary. If union representatives fail to make any investigation to justify their opinion as to the probable outcome of an arbitration, they act arbitrarily in not pursuing the matter through the grievance procedure.

Gross negligence or obvious flagrant errors in investigating or processing a grievance come within the ambit of the word "arbitrary". However, proof that a union has acted negligently

in the handling of a grievance or complaint does not in and of itself, amount to arbitrary conduct.

Although the Board's task in a Section 7 case is not to adjudicate upon the merits of the complainant's grievance, it is often necessary for the Board to assess its prima facie merits. That is because the degree of care which must be exercised by the union will depend on the worthiness of the employee's case.

Section 7(1) does not, however, protect employees from a union's inadvertant errors or its poor judgments.

As long as it can be concluded that the union investigated the grievance, obtained full details of the case, including the employee's side of the story, put its mind to the merits of the claim, and made a reasoned judgment as to its disposition, that decision, if taken conscientiously, will be upheld by the Board. A union fulfills its duty pursuant to Section 7(1) if it takes a reasonable view of the problem before it arrives at a thoughtful judgment about what to do after considering the various relevant and conflicting considerations.

The following extract from the Board's decision in Rayonier Canada Ltd., BCLRB No. 40/75 [1975] 2 CLRBR 196 offers good guidance:

> " The judgment in particular cases depends on the cumulative effect of several relevant features: how critical is the subject matter of the grievance to the interest of the employee concerned? How much validity does his claim appear to have, either under the language of the Agreement or the available evidence of what has occurred, and how carefully has the union investigated these? What has been the previous practice respecting this type of case, and what expectations does the employee reasonably have from the treatment of earlier grievances? What contrary interests of other employees or of the bargaining unit as a whole have led the union to take a position

against the grievor and how much weight should be attached to them"?

(at 204)

3. What is "Discriminatory Conduct?

Factors such as race, religion, sex and age should not influence the way a union handles a complaint or grievance. Each employee is entitled to be treated as an individual. To avoid violating Section 7(1) favoritism and prejudice can play no part in the way a union handles an employee's problem.

A union should treat all employees in a fair and equitable way. The Board in Brian Davies, BCLRB LD No. 61/83 stated:

> " To avoid acting in a manner that is 'discriminatory', the union must not distinguish among members in the bargaining unit unless there are good reasons for doing so. Like situations should be treated in a like manner unless some other treatment is justified by the circumstances."
>
> (at 9)

4. What is Bad Faith?

This means that a union must not make decisions affecting employees which are motivated by ill will. If an employee can show a decision is influenced by personal hostility, revenge, or dishonesty, then the union will be found to have violated Section 7(1). Union officers cannot allow their personal feelings towards individual employees to become a factor in deciding if or how grievances are to be pursued.

5. Board Procedures Under Section 7(1)

To initiate a Section 7(1) complaint, an employee need only write a letter to the Board setting out his complaint against his trade union and the remedy he wants. The letter should contain sufficient information to enable the Board to process the complaint including why that individual alleges that the union's actions amount to a violation of Section 7(1).

The Board then sends copies to the trade union and the employer and requests written submissions from them. When those submissions are received, copies of the submissions are sent to the complainant and the complainant is then given an opportunity to provide the Board with a written reply.

At the same time, the Chairman appoints an Industrial Relations Officer to inquire into the dispute, investigate the complaint and provide the Board with a report setting out the information he acquires during his investigations. This report is not available to the complainant, union, or employer.

If the Industrial Relations Officer is unable to effect a settlement at this stage, the Chairman will assign the file to a panel of the Board which will usually be composed of a Vice-Chairman and two Board members. The panel then decides whether or not to hold a formal hearing--a formal hearing is not held in every case.

The panel may ask a Special Investigating Officer to meet with the parties and attempt to work out a solution that is satisfactory to all concerned.

If the special investigating officer is unable to work out a solution and the panel decides to conduct a hearing, the complainant, union, and employer are given the opportunty to call their own witnesses, cross-examine the other parties' witnesses, and present submissions at the hearing. Sometimes during the process of the hearings, the panel is able to effect a settlement of the dispute between the parties but if not, at the conclusion of the hearing, the panel will normally reserve its decision and will issue a formal decision in the form of written reasons sometime following the hearing. Sometimes the panel is able to announce its decision immediately following the conclusion of the hearing with brief oral reasons.

6. Conclusion

As noted in the Board's 1984 Annual Report, few Section 7(1) complaints that proceed to a hearing are successful.

VII. THE WORK OF THE BOARD IN 1985

In 1985, the Board received 4280 applications. This caseload represents a decrease from the 1984 figure of 4696. The Board disposed of 4231* applications in 1985, a decrease from the 4700 applications disposed of in 1984 (The statistical assumptions on which these and other figures are based are stated at the beginning of Part VIII of this Report - Statistical Appendix). This volume of cases must be administered by a Board which, under Section 13 of the Code, may legally sit at one time in any one of ten different Panel arrangements. To deal effectively with its workload, the Board has adopted certain procedural approaches which will be described in general terms here, before the details of the Board's decisions in 1985 are reviewed.

Procedure of the Board

A large number of cases are processed on a strictly administrative basis. The application or complaint is investigated by an Industrial Relations Officer of the Ministry of Labour who files a report with the Board. This report, together with the submissions of the parties, is reviewed by a Panel of the Board, usually consisting of either the Chairman or one of the Vice-Chairmen. In cases that are clear and uncontested a decision is made without a hearing. With respect to applications for certification for units of unorganized employees, however, a hearing is always held.

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* Including some applications carried over from 1984.

In cases which are contested, the Board attempts to achieve a settlement before proceeding to the stage of a formal hearing and adjudication. This settlement procedure involves an attempt at mediation by the Industrial Relations Officer, by the Registrar and his staff, and/or by a Panel of the Board at a hearing. This policy is especially important in the following areas of the Board's work: unfair labour practice complaints, disputes under a collective agreement brought to the Board under Section 96(1), and strikes and picketing complaints. In these areas, the Board successfully achieves a voluntary accommodation in approximately two-thirds of the cases (see Table 4).

Hearings

Contested cases which are not settled and which cannot be decided upon the basis of the materials on file, may be the subject of a hearing before the Board. All applications to certify unorganized employees are heard expeditiously by the Board. Any objections to the application for certification are raised at the hearing. Hearings are conducted by a Panel usually consisting of three members, and sometimes consisting of one or five members. To accommodate the parties to a dispute, hearings are often held at their request on short notice and at various places throughout the Province. The Board often arranges informal meetings between the parties and one or more Board members, with the intention of forestalling formal litigation. In 1985, the Board held 489 formal hearings (a decrease of 10 from the previous report year). This number included 245 expedited certification hearings.

Published Decisions

In contested cases that are unresolved by the parties, the Board's general practice has been to give extensive written reasons for its decisions. These formal decisions explain the Board's findings to the immediate parties and lay down general guidelines about the Board's policy and interpretation of the Code. The formal decisions are numbered and are made available to unions, employers, counsel, and other interested parties.

In addition to its formal decisions, the Board has continued to issue decisions which contain brief reasons or no reasons at all and which have no precedential value other than to the particular parties to the application.

Decisions which the Board believes will constitute important precedents for the future are published in a series entitled the Canadian Labour Relations Boards Reports (New Series), which is published by Butterworth & Co. (Canada) Ltd.

Applications for Reconsideration

Section 36 of the Labour Code provides as follows:

> 36.(1) The board may, on application by any person, or on its own motion, reconsider a decision or order made by it or by a panel under this Act, and may vary or cancel the decision or order.
>
> (2) For the purposes of this Act the certification of a trade union and the accreditation of an employers' organization are decisions of the board.

Under Section 36 of the Labour Code, a large number of applications are made to the Board for variances in the details of an existing certification or accreditation (see Section 'D' of this Part and Tables 1-4).

In addition, requests for reconsideration of decisions of the Board are also handled through the vehicle of Section 36. In 1985, the Board received 170 applications for reconsideration of this latter kind -- essentially appeals -- and 154* such applications were disposed of in the year. Of these, 29 were withdrawn, 105 were dismissed, and 20 resulted in a change in the original decision (see Tables 1-4 and Table 13).

The procedure for reconsideration of decisions by the Labour Relations Board is as follows. Whether or not a hearing has been held, a party has 15 working days from the issuance of the Board's decision to request reconsideration of that decision. In all cases, a Panel of the Board makes an initial determination about whether the stated basis for the reconsideration asserts a prima facie case for review of the original decision. Where a request for reconsideration is made, the parties are invited to file detailed written submissions, which can be developed further in oral argument if the Board decides to conduct a hearing. In a small number of cases which are of special significance to the labour relations community, the Board has invited representations from employer or trade union organizations to assist the Board in understanding the broader implications of its rulings.

This procedure for reconsideration provides a back-stop by which the Board is able to avoid or correct inadvertent errors

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* Including some applications carried over from 1984.

and undo any miscarriages of procedural justice which may have occurred in the regular flow of its large caseload. It also allows the Board to ensure that different panels of the Board properly interpret the law and policy of the Labour Code. For a fuller discussion of the Board's policy with respect to applications for reconsideration see: The Corporation of the District of Burnaby, BCLRB No. 25/74, [1974] 1 Can LRBR 128; and Western Cash Register (1955) Ltd., BCLRB No. 84/77, [1978] 2 Can LRBR 532.

"Success" Rate of Appeals

	1981	1982	1983	1984	1985
Total Applications Disposed of	171	161	189	211	154
Number of These Withdrawn	34	18	22	28	29
Number of Applications Processed to a Final Decision	137	143	167	183	125
Number of Applications Resulting in a Revision of the Original Decision	37	18	38	40	20
"Success" Rate of Appeals	27%	13%	23%	22%	16%

With this preface regarding the Board's caseload and method of operation, we can now turn to the major areas of the Board's jurisdiction.

A. Certifications

The largest group of decisions made by the Board is in respect of applications for certification brought under Section 39 of the Code.

> 39.(1) Where a collective agreement is not in force and a trade union is not certified as bargaining agent for a unit appropriate for collective bargaining, a trade union claiming to have as members in good standing not less than 45% of the employees in that unit may at any time, subject to the regulations, apply to the board to be certified for the unit.
>
> (2) A trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may, subject to the regulations, apply to the board to be certified for the unit where
>
> (a) a collective agreement is not in force, and either
>
> (i) 6 months have elapsed since the date of certification of a trade union for the unit; or
>
> (ii) the board has consented to an application before the expiry of the 6 months; or
>
> (b) a collective agreement is in force, only during the period.
>
> (3) Notwithstanding subsection (2), where
>
> (a) one or more applications have been made during a period, regardless of the outcome; or
>
> (b) the board, pursuant to section 57(3), certifies a council of trade unions as bargaining agent for a unit, or varies a certification by substituting for the trade union or trade unions named in it a council of trade unions as the bargaining agent for a unit,
>
> a trade union may not apply to be certified for that unit or, in the case of a council of trade unions, for a constituent part of the unit, until the second period after the date of the application, the certification or the

variation of a certification, whichever is latest.

(4) Notwithstanding subsections (2)(b), 3(a) or 3(b),

(a) a trade union that is a party to a collective agreement, but is not certified for the employees covered by it, may apply to be certified at any time; and

(b) a council of trade unions comprised of trade unions that are parties to collective agreements may apply to be certified at any time in place of those trade unions.

(5) Two or more trade unions claiming to have together as members in good standing a majority of employees in a unit appropriate for collective bargaining may join in an application under this Part, and the provisions of this Act relating to an application by one trade union, and all matters or things arising from it, apply to the application and those trade unions as if one trade union were applying.

(6) In this section "period" means the seventh and eighth months in each year of a collective agreement or a renewal or continuation of it.

Section 39 provides for two different kinds of applications, each with its own legal requirements. Under Section 39(1), a union may seek certification for a group of previously unorganized employees, i.e., those not subject to an existing certification or collective agreement. Section 39(1) provides that, in order for a union to make such an application, it is required to have a minimum membership support of 45%. Section 39(2) provides that a union may seek certification for a group of employees already represented by another union. The minimum membership requirement in such cases is more than 50% and the application is subject to certain timing requirements, i.e., it must be made at a specified interval following the earlier certification or at a specified period during the term of a collective agreement. Section 39(5) makes special provision for a joint application for certification by a number of unions.

This last section was used three times in the report year 1985.

The Board processed 333 certification applications in 1985. This represents a decrease from the 376 applications processed in the report year 1984. Of the 333 applications processed in 1985, 61 were withdrawn (for a variety of reasons) leaving 272 to be formally decided by the Board. The majority of this number, 234 to be exact, were applications made in respect of previously unorganized employees. The remainder, 38 in number, involved employees then represented by a union.

Of the 234 applications under Section 39(1), a total of 63 were dismissed for reasons enumerated in Table 7. A total of ten applications were found to be beyond the Board's jurisdiction, either on constitutional grounds or based on the definition of "unit". In another three cases, applications were rejected in circumstances where an existing certification was varied to include the employees for whom the application was made. Accordingly, of those cases within the Board's jurisdiction, 50 certification applications (23%) were denied in situations where the result was to leave the employees without any union representation.

The Board disposed of another 38 certification applications under Section 39(2) in respect of employees already represented by another union. This number represented about 14% of the total certification decisions in 1985. Thirty-six applications were contested and involved entire bargaining units. The remaining two applications were made in an attempt to fragment an existing unit. Of the 38 applications, 34 were made during the term of an existing collective agreement. The applicant union was successful in obtaining certification in 16 of the 38 cases. In one case, the application for certification was dismissed but an existing certification was varied to include

the employees. The incumbent union retained its certification in the remaining 21 cases.

Since the subject of certification applications under Section 39(2) (or "raids" as they are commonly termed) has continued to generate considerable discussion in the labour relations community in British Columbia, it may be useful to present the pertinent data regarding the number of employees involved in such cases. In 1985, applications under Section 39(1) involved 3511 employees, of whom 2387 obtained union representation. By contrast, inter-union contests under Section 39(2) involved 4300 employees, with a resulting change in union representation for 1957 of these employees. (See Table 8A.) A review of the Board's files indicates that, of the total 36 cases and 4300 employees, six inter-union rivalries resulted in more than one application and affected 2866 employees (67%).

Inter-union contests between the Construction and General Workers' Union and the Service Employees International Union produced eight applications involving 1085 employees; between the Hotel & Restaurant Employees' and Bartenders' Union and the Canadian Hotel and Allied Workers Local 1, Canadian Association of Industrial, Mechanical and Allied Workers, six applications involving 246 employees; between the Hotel & Restaurant Employees' and Bartenders' Union and the B.C. Hospitality Workers Union, four applications involving 81 employees; between the B.C. Government Employees' Union and the Food and Service Workers of Canada, two applications involving 1198 employees; between the International Woodworkers of America and the Pulp, Paper and Woodworkers of Canada, two applications involving 230 employees; and between the International Woodworkers of America and the International Union of Operating Engineers, two applications involving 26 employees.

In 1985, the number of employees receiving certification was 4330, an increase from the 4199 employees receiving certification in 1984. The number of employees involved in a contested change of union representation increased from 1437 in 1984 to 1957 in 1985.

B. Representation Votes

In all applications for certification, a representation vote is required, except for those made under Section 45 of the Code.

Section 43(1) of the Code provides as follows:

> 43.(1) Where the board receives an application for certification under section 39 and the board determines, after investigations it requires, that the unit is appropriate for collective bargaining and that on the date the board received the application not less than 45% of the employees in the unit were members in good standing of the trade union making application, the board shall order that a representation vote be taken, and the board shall,
>
> (a) certify the trade union as bargaining agent for the unit where a representation vote has been held in which the majority of the votes included in the count favour having the trade union represent the unit as bargaining agent, or
>
> (b) where a representation vote has been held in which the majority of votes included in the count are not in favour of having the trade union represent the unit as bargaining agent, refuse to certify the trade union as bargaining agent for the unit.

Where the Board receives an application for certification under Section 39, the Board must make three determinations: (1) is the applicant a trade union within the meaning of the Code, (2) is the unit appropriate for collective bargaining and (3) on the date the Board received the application, are, not less than 45% of the employees in the unit, members in good standing of the applicant trade union. If the Board answers each of those three questions in the affirmative, then it will order that a representation vote be taken. Where a representation vote is held and the majority of the votes included in the count favour having the trade union represent the unit as bargaining agent, the Board will certify the trade union.

A representation vote to cancel a certification will be held where the Board receives a decertification application under Section 52(2) signed by at least 45% of the employees in a bargaining unit. The Board may refuse to hold a vote where it finds that there has been an unfair labour practice such that the true wishes of the employees cannot be ascertained. However, where a vote is held and a majority of the employees support the decertification, the Board will cancel the union's certification.

Sections 55(3) and (4) of the Code address the question of who is eligible to vote in a representation vote.

> 55.(3) All persons who are employees within a unit at the time an application for certification or decertification is received by the board, and who remain employees within the unit at the time of the vote, are eligible to vote in a representation vote with respect to the application.
>
> (4) If the board in its discretion directs that they may vote,
>
> (a) persons who, at the time an application for certification was received by the board,

> were not employees within the proposed unit, but who are employees within the unit at the time of the vote, and
> (b) persons who, at the time an application for decertification was received by the board, were employees within the unit, but who are not employees within the unit at the time of the vote,
> are eligible to vote in a representation vote.

Where an objection to a person's eligibility to vote is raised, the Board's normal practice is to allow the person to cast a ballot, and have the ballot segregated and sealed. After the completion of the voting and before the votes are counted, the Board will decide the issue of the person's eligibility to vote pursuant to Section 55(3) and (4).

Apart from Sections 43 and 52, there are other provisions in the Code which allow the Board to order that a representation vote be taken. Under the successorship provision of the Code, which deals with the labour relations consequence of a sale or other disposition of a business, the Board may order that a representation vote be taken, in order to determine which trade union shall be the bargaining agent for any unit created as a result of the successorship (Section 53(2), (3)). The Board may also order that a representation vote be taken before declaring that one trade union has acquired the rights of another trade union, by reason of a merger, amalgamation or transfer of jurisdiction (Section 54(2)). Section 40 of the Code requires the Board to conduct a representation vote before issuing a multi-employer certification. Representation votes are used to determine consent to trade union representation by dependent contractors (Section 48(1)) and by professional employees (Section 153(2)). Finally, representation votes are used to determine whether a proposed council of trade unions is representative of the employees in the proposed bargaining unit

(Section 57) (For statistics on the Board's use of the representation votes described here, see Statistical Appendix page 81 and Table 9).

C. Unfair Labour Practices and Remedies

Section 2 of the Labour Code states that "every employee is free to be a member of a trade union and to participate in its lawful activities". The scope of this freedom is defined and protected by a network of legal restrictions on the conduct of either employers or trade unions which may infringe upon the exercise of such freedom.

Section 4(3) prohibits coercion or intimidation by a trade union which might compel or induce a person to be or not to be a trade union member.

> 4. (3) A trade union or person acting on its behalf shall not seek, by the use of coercion or intimidation of any kind, to compel or induce a person to become, refrain from becoming or continue or cease to be a member of the trade union or another trade union.

Section 3 contains a series of specific directives to employers which are of special importance in a union organizing campaign.

> 3. (1) An employer or a person acting on his behalf shall not participate in or interfere with the formation or administration of a trade union or contribute financial or other support to it.
>
> (2) An employer may, notwithstanding this section, permit an employee or representative of a trade union to confer with him during

working hours or to attend to the trade union's business during working hours, without deducting time so occupied in computing the time worked for the employer and without deducting wages for that time.

(3) An employer or a person acting on his behalf shall not

(a) discharge, suspend, transfer, lay off or otherwise discipline an employee, refuse to employ or continue to employ a person or discriminate against a person in regard to employment or a condition of employment because the person

(i) is or proposes to become, or seeks to induce another to become, a member or officer of a trade union; or

(ii) participates in the promotion, formation or administration of a trade union;

(b) impose a condition in a contract of employment that seeks to restrain an employee from exercising his rights under this Act;

(c) seek by intimidation, by dismissal, by threat of dismissal, or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by a wage increase, or by altering any other terms of employment, to compel or to induce an employee to refrain from becoming, or continuing to be, a member or officer or representative of a trade union;

(d) use, or authorize or permit the use of, a professional strike breaker or an organization of professional strike breakers; or

(e) refuse to agree with a trade union, certified as the bargaining agent for his employees under this Act who have been engaged in collective bargaining to conclude their first collective agreement, that all employees in the unit, whether or not members of the trade union, but excluding those exempted under section 11, will pay union dues from time to time to the trade union,

but, except as expressly provided, this Act shall not be interpreted to limit or otherwise affect the right of the employer to

(f) suspend, transfer, lay off or discharge an employee for proper cause;

(g) communicate to an employee a statement of fact or opinion reasonably held with respect

> to the employer's business; or
> (h) make a change in the operation of the employer's business reasonably necessary for the proper conduct of that business.

The employer may not interfere in the formation of the union or favour one union over another; it may not refuse to hire because of union membership or manipulate working conditions to discourage unionization; it may not threaten loss of jobs or plant shutdown in the event of certification. Of prime importance is the legislation governing the discharge of an employee for union membership or activities. Recognizing the serious impact this can have on employees and the difficulty the union has in establishing the employer's motivation, the Code places on the employer the onus to establish affirmatively that such a discharge did not stem, even in part, from an improper anti-union purpose (see Section 8(6)).

The employer's right to run its business efficiently and without the interference of a union organizing campaign during working hours is protected by Section 4(1) and (2).

> 4.(1) Except with the employer's consent, a trade union or person acting on its behalf shall not attempt, at the employer's place of employment during working hours, to persuade an employee of the employer to join or not join a trade union.
> (2) Where employees reside on their employer's property or on property to which he or another person has the right to control access or entry the employer or other person shall on the board's direction permit a representative authorized in writing by a trade union to enter the property to attempt to persuade the employees to join a trade union. If directed by the board and on request by the representative, the employer shall provide him with food and lodging at the current price, and of a similar kind and quality as that provided to the employees.

Once a trade union is certified, Section 6 requires both the employer and the union to bargain in good faith and make every reasonable effort to conclude a collective agreement.

> 6. A trade union or employer shall not fail or refuse to bargain collectively in good faith in the Province and to make every reasonable effort to conclude a collective agreement; but where a trade union and the employer have concluded a collective agreement outside the Province, it is invalid in the Province until a majority of the employees in the Province covered by the agreement ratify it.

Since certification gives the union the exclusive legal authority to bargain on behalf of all employees, Section 7 prohibits the union from acting in a manner which is arbitrary, discriminatory, or in bad faith, in the representation of any of these employees.

> 7.(1) A trade union or council of trade unions shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees in an appropriate bargaining unit, whether or not they are members of the trade union or of a constituent union of the council.
>
> (2) An employers' organization shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employers in the group appropriate for collective bargaining.

Section 5 deals with employee rights with respect to fair and reasonable conditions of membership in a union.

> 5.(1) In this section
> "industrial action" means
> (a) a strike,
> (b) picketing, and
> (c) any other act or omission by employees or by a trade union that interrupts or

> restricts any business operation or employment;
> "unlawful industrial action" means industrial action that is prohibited by or under this Act.
>
> (2) No trade union shall
>
> (a) expel, suspend or impose a penalty on a member or refuse membership in the trade union to any person, or impose any penalty or make any special levy on any person as a condition of admission to membership of the trade union or council of trade unions except for a cause which is in the board's opinion fair and reasonable, or
>
> (b) charge, levy or prescribe initiation fees, dues or assessments that are deemed by subsection (4) to be discriminatory, or that are in the board's opinion unreasonable or discriminatory.
>
> (3) The fact that a person has
>
> (a) not participated in unlawful industrial action,
>
> (b) entered a place of business, operations or employment in respect of which unlawful industrial action was occurring,
>
> (c) dealt in or handled products of a person at whose place of business unlawful industrial action was occurring, or
>
> (d) done business with a person in respect of whom unlawful industrial action was being carried on,
>
> is not fair and reasonable cause for the purpose of subsection (2)(a).
>
> (4) Where a trade union charges, levies or prescribes different initiation fees, dues or assessments in respect of a person according to whether he applies or has applied for membership in the trade union before or after an application for certification by the trade union to represent him as bargaining agent, the fee, due or assessment shall be deemed to be discriminatory for the purpose of subsection (2)(b).

What are the steps which the Board can take under Section 8(4) of the Code when it finds that a violation of the law has occurred? The basic remedy under the statute is a cease and desist order under Section 8(4)(a) against illegal conduct by a

trade union, an employer, or any other person. This power of the Board is supported by further remedies specifically tailored to certain problems. The one most often used in practice, because of the large number of discharge cases handled, is the Board's power under Section 8(4)(c) to order reinstatement and/or back pay for an employee discharged or otherwise disciplined contrary to Section 3(3)(a). Also useful is the remedy contained in Section 8(4)(d) of the Code under which the Board may forestall, for as long as 60 days, any employer attempts to influence employee freedom of choice by altering wages or other working conditions. A remedy of considerable value is Section 8(4)(e) which gives the Board discretion to certify or to refuse to certify an applicant trade union in circumstances where an unfair labour practice has made it difficult to determine the true wishes of the employees. Accompanying Section 5 of the Code is Section 8(4)(c.1) which sets out remedies for those situations where the Board finds a violation of Section 5.

In 1985, the Board received 348 complaints of violations of these several provisions of the statute, 5% more than the number received in 1984. The Board disposed of 350 complaints; 231 were settled without adjudication, usually through the assistance of an officer of the Board and four were withdrawn prior to any significant Board involvement. Of the remaining 115 complaints formally decided by the Board, 93 were rejected and 22 resulted in findings of unfair labour practices. Hearings were held for 113 applications and 82 of the 115 Board decisions were accompanied by published reasons.

Section 3

The source of a large number of unfair labour practice charges is some type of employer activity designed to discourage employees from organizing. Of the 350 unfair labour practice cases disposed of by the Board in 1985, 139 alleged violations of Section 3 of the Code. Three complaints were withdrawn prior to any significant Board involvement. Of the remaining 136 complaints, 62 alleged dismissals contrary to Section 3(3)(a), while another 74 complained of employer tactics short of actual discharge. Of these 74 complaints, 69 involved allegations of improper attempts to induce or compel abstention from union membership, four were based on alleged interference with trade union administration and one alleged the use of professional strike breakers.

A significant unfair labour practice complaint is that concerning discharge for union involvement, alleged in 62 of the 350 complaints. Almost all of these 62 complaints were brought by trade unions; only one application was filed by the individual affected. Settlements were reached with the assistance of the Board or one of its officers in 50 cases. Twelve discharge cases required adjudication by the Board.

Twenty of the 62 dismissal complaints were withdrawn by the unions involved and Board records do not indicate the fate of the dismissed employees. Of the remaining 42 dismissal complaints, including settlements and decisions, 36 culminated in some form of positive relief for at least some of the employees affected.

The Board's power under Section 8(4)(c) to order reinstatement and/or back pay was the basis of four Board decisions

involving five employees. Three of these employees were reinstated with back pay. One was reinstated without back pay. For one employee, the Board ruled a violation had occurred and left it to the parties to attempt to arrive at a remedy, while retaining jurisdiction to resolve the matter if the parties could not. In another three cases, consent orders were issued, reinstating the ten employees involved.

Sixteen complaints requested certification under Section 8(4)(e) in conjunction with a complaint under Section 3. In two cases, the request was granted. We note that in four of the remaining cases, the union did secure certification under Section 43 of the Labour Code.

Sections 4(1) and (2)

Three complaints were filed by an employer alleging that unions had been organizing on the employer's properties during working hours. Two cases were settled. The Board ruled a violation had occurred for the third case. One complaint under this section was filed by a rival union. This complaint was settled.

Section 4(3)

Section 4(3) prohibits any actions by a union which could have the effect of influencing a person in deciding whether to be or cease being a union member. In 1985, the Board disposed

of 12 applications alleging violations of this section. One application was withdrawn prior to any significant Board involvement. Five cases were settled and the Board dismissed five applications. In one case, the Board ruled a violation had occurred.

Section 5

The Board dealt with 13 applications under Section 5 (fair and reasonable conditions of membership in a union), ten filed by employees, two filed by rival unions and one filed by an employer. Seven cases were settled and four applications were dismissed. In two cases, the Board ruled a violation had occurred.

Section 6

There were 38 complaints disposed of alleging a refusal to bargain in good faith as required by Section 6 of the Code. Twenty-nine were filed by unions, six by employers and three by an employer association.

Of the 38 charges of failure to bargain in good faith, 31 were voluntarily resolved. Five of these complaints were rejected by the Board. In two cases, a violation was deemed to have occurred.

Section 7

In 1985, the Board disposed of 141 complaints by individual employees alleging a violation by their union bargaining agent of the duty of fair representation contained in Section 7 of the Code. Seventy-eight of these complaints were voluntarily resolved through the efforts of an officer or a member of the Board. Fifty-nine complaints were rejected by the Board. In four cases, a violation was deemed to have occurred. In three of these cases, the union was ordered to proceed to arbitration. In the fourth case, the complaint was resolved through a consent order signed by the parties.

The Board also dealt with three complaints pursuant to Section 7 filed by employers against accredited employer organizations. These complaints were all settled.

Section 70

Although not located in the unfair labour practice part of the Code, the controversial power of "first contract arbitration" conferred on the Board by Section 70 may usefully be reviewed here. As a practical matter, this power is designed as a remedy for those cases where there were difficulties between the parties at the representation stage and they have not been able to engage in serious, good faith bargaining following certification.

Following referral of the dispute by the Minister of Labour, the Board has the power to settle the terms of the

collective agreement for a period of one year. The Board has imposed 12 contracts since Section 70 was introduced. However, it should be noted that the Board does not automatically impose a first collective agreement on the parties, even where a persuasive application is made. Instead, it makes a determined effort to secure a voluntary settlement of the agreement. The objective of Section 70 is to foster an enduring collective bargaining relationship. In the Board's view, a solution agreed to by both parties is a much better foundation for such a relationship than an order imposed by the Board.

In 1985, there were no applications under Section 70 referred to the Board by the Minister.

D. Applying the Code to the Bargaining Relationship

Once the issue of union representation is disposed of, the Board is required to apply the provisions of the Labour Code to a large number of issues which may arise in a collective bargaining relationship.

Sections 51 and 61

Section 51 of the Code requires the consent of the Board to changes in working conditions while a certification application is pending.

> 51.(1) Where an application for certification is pending, a trade union or person affected by the application shall not declare or engage in a strike, an employer shall not declare a lockout, and an employer shall not increase or decrease rates of pay, or alter a term or condition of employment of the employees affected by the application, without the board's written permission.
>
> (2) This section shall not be construed as affecting the right of an employer to suspend, transfer, lay off, discharge or discipline an employee for proper cause.

Section 61 imposes the same requirement for four months following certification or until a collective agreement is executed, whichever occurs first. The Board's policy under these Sections is to enquire from the trade union whether it objects to the proposed alteration. Ordinarily, the union does not object and the application is granted. In those cases where the union does object with reasons, the Board usually withholds permission. This report year saw two applications disposed of under these Sections. One was granted and one was withdrawn.

Section 34

Another question which may arise during a certification application is whether certain individuals are "employees" under the Code and, if so, whether they are properly included in a bargaining unit. The policy of the Board is not to proceed with such questions until after the certification is completed, except in those rare cases where the status of certain individuals in question may affect whether 45% of the employees in the unit are members in good standing of the trade union. Following certification, either the trade union or the employer

may apply to the Board under Section 34 for a determination of the position of the person under the Code and the bargaining unit. Such questions also arise during the course of the collective bargaining relationship when new persons are hired or job functions are changed. In 1985, a total of 55 applications under Section 34 involving this issue were disposed of by the Board. The practice of the Board is to have an Industrial Relations Officer investigate the factual nature of the individual's position and make a report. An additional 83 applications referred to other questions under Section 34 of the Code.

Once collective bargaining has been established, material changes in circumstances can require a decision of the Board adjusting the certification to the new situation. Most of these take the form of an application to the Board under Section 36 for a variance of a certification or accreditation. A number of cases involve applications under Sections 53 and 54, the successorship provisions of the Code, and under Section 37, the "common employer" provision. Finally, under Section 52, a union's certification for a particular bargaining unit may be cancelled.

Variance of Certification

In 1985, the Board received 637 applications for certification variance, an increase of 55% from the 1984 figure. Most of these applications involve a simple change in the name or address of the employer or the trade union, and are simply processed. In a few cases, however, the requested variance

would have the effect of increasing or decreasing the number of employees in the existing bargaining unit, and these are often contested. The policy of the Board in these cases is to exercise its discretion under Section 36 in accordance with the principles established by the Code for certification or decertification proceedings, and particularly to investigate the wishes of the group of employees concerned.

Successor Status

Quite frequently, there is a fundamental change in the identity of a party to the certification. This often occurs when a business is sold. Section 53(1) provides for the automatic transfer of the certification and the collective agreement.

> 53.(1) Where a business or part of it or a substantial part of its entire assets are sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Act before the date of the disposition, and the proceedings shall continue as if no change had occurred; and where a collective agreement is in force, it continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by him.
>
> (2) Where a question arises under this section, the board, on application by any person, shall determine what rights, privileges and duties have been acquired or are retained, and for this purpose the board may make inquiries or direct that representation votes be taken as it considers necessary or advisable.
>
> (3) The board, having made an inquiry or directed a vote pursuant to this section, may
>
> (a) determine whether the employees

> constitute one or more units appropriate for collective bargaining;
> (b) determine which trade union shall be bargaining agent for the employees in each unit;
> (c) amend, to the extent it considers necessary or advisable, a certificate issued to a trade union or the description of a unit contained in a collective agreement;
> (d) modify or restrict the operation or effect of a provision of a collective agreement in order to define the seniority rights under it of employees affected by the sale, lease, transfer or other disposition; and
> (e) give directions the board considers necessary or advisable, as to the interpretation and application of a collective agreement affecting the employees in a unit determined under this section to be appropriate for collective bargaining.

In cases where the application of Section 53 is questionable, particularly where there may be an overlapping of bargaining rights, the parties may apply to the Board under Section 53(2) for a clarification of the issues. Section 53(3) gives the Board a range of remedies to deal with such cases. The Board received 236 applications, 184 under Section 53 and 52 under Section 54 (which deals with one union applying to succeed another), during 1985, a decrease from the 426 received under both Sections in 1984.

Section 37

Sometimes, a change in the identity of an employer results from the fact that a single management group operates through

two or more legally distinct business enterprises, usually companies or partnerships. When such corporate interrelationships threaten existing or impending rights or obligations under the Code, the Board may act under Section 37 to treat all of the enterprises as one employer for the purposes of the Code.

> 37. Where, in the board's opinion, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or a combination of them, under common control or direction, the board may treat them as constituting one employer for the purposes of this Act.

In 1985, the Board disposed of 67 applications under this Section, 33 of them involving enterprises in the construction industry. Forty-five of the 67 applications were settled or withdrawn. This was in part due to the procedures developed by the Board to expedite the applications arising in the construction industry and to promote the voluntary settlement of these cases. Of the remaining 22, the Board granted 14 with respect to at least some of the enterprises named in the application. The balance were rejected.

Decertification

Section 52 of the Code provides for a procedure by which the certification of a trade union may be cancelled on application by the employees in the unit. Subject to the timing restrictions set out in Section 52(3), where not less than 45% of the employees in the unit sign an application for cancellation of the certification, the Board will order that a

representation vote be taken. However, pursuant to Section 52(5), the Board may refuse to order a representation vote and refuse to cancel a trade union's certification where any employees in the unit are affected by an order of the Board concerning an unfair labour practice and the Board considers that, by reason of the unfair labour practice, a representation vote is unlikely to disclose the true wishes of the employees. Where a representation vote is held, and the majority of the votes included in the count are against having the trade union represent the unit as bargaining agent, then, subject to Section 52(5), the Board will cancel the union's certification.

Under Section 52(8) an employer who has not, in the preceding two years, employed any person as an employee in the bargaining unit, may apply to have the business decertified. The Board may refuse to cancel the certification where, in the Board's opinion, the conduct of the employer is unfair or unreasonable.

For statistics regarding decertification, see Table 8B.

E. Administration of the Collective Agreement

Under Part 6 of the Labour Code, the preferred vehicle for resolution of disputes under a collective agreement is grievance arbitration. But under the statute, the Board does have a significant role to play in the administration of the collective agreement. In this part of the report, we deal with two major areas of Board involvement in this process.

Section 96

Section 96(1) gives the Board a comprehensive original jurisdiction in resolving grievances arising under the provisions of a collective agreement.

96.(1) Notwithstanding the provision required or prescribed under section 93 or 94,

(a) if at any time prior to the appointment of an arbitration board or other body, either party to the collective agreement requests the board in writing to appoint an officer to confer with the parties to assist them to settle the difference, and the request is accompanied by a statement of the difference to be settled, the board may

(i) appoint that officer; or

(ii) proceed as provided in paragraph (c);

(b) where an officer is appointed under paragraph (a), the officer shall, after conferring with the parties, report to the board;

(c) where the board decides, under paragraph (a) (ii) to proceed under this paragraph, or the officer's report is made under paragraph (b), the board may, if it believes the difference, when referred to the board, is arbitrable,

(i) refer the difference back to the parties; or

(ii) inquire into the difference, and after the inquiry it considers adequate, make an order for final and conclusive settlement of the difference;

(d) where the board refers the difference back to the parties under paragraph (c)(i), the parties shall follow the procedure in the provision required or prescribed under section 93 for final and conclusive settlement of the difference;

(e) where the board

(i) inquires into the difference under paragraph (c)(ii); or

> (ii) advises the parties that in its opinion the difference is not arbitrable, neither the Arbitration Act nor any other procedure for settlement of the difference applies; and
>
> (f) where the board inquires into the difference under paragraph (c)(ii), it may exercise all the powers of an arbitration board under this Part, and its order for final and conclusive settlement of the difference is final and binding on the parties and on all other persons bound by the collective agreement, and all those parties and persons shall comply with the order.

This procedure has been used both by trade unions and employers since it was first introduced into British Columbia law in 1963 in the form of Section 22(4) of the old Labour Relations Act *. In this report year, the number of applications filed with the Board decreased from 641 in 1984 to 594 in 1985.

Under Section 96(1), a party to a collective agreement may request the Board to appoint an officer to assist in the settlement of a difference arising during the term of a collective agreement. The Board is not required to appoint an officer simply because a party to an agreement has made such a request. But its practice has been to make an appointment if the difference between the parties appears to be arbitrable under the agreement and if all the steps in the grievance procedure prior to arbitration have been exhausted. This is

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* It should be noted that the availability of Section 96(1) as an alternative to arbitration is not mandated by law. Section 96(2) of the Code allows the parties, by specific agreement, to exclude the Board from any role in resolving grievances under their collective agreement.

because the Board considers that the primary purpose of Section 96 is to offer the parties help and advice in resolving their differences without the expense and delay of an arbitration hearing.

In the first ten report years, officer mediation under Section 96 of the differences arising under a collective agreement achieved a settlement of approximately two-thirds of the applications made to the Board. In 1984, the proportion settled was 67% of the total applications disposed of and in 1985, this proportion increased to 72%.

The Board disposed of 560 applications under Section 96(1) in the report year. Of these, a total of 403 were voluntarily settled, almost all through the efforts of an officer. This very substantial rate of officer settlement is of major benefit to the labour relations community in British Columbia in two respects. The parties reach a voluntary accommodation of their differences under their own contract rather than having a binding decision imposed by an outside legal authority. In the process, a potentially serious overloading of the arbitration procedure is avoided.

If the officer appointed by the Board does not achieve a voluntary settlement of an arbitrable difference, the Board may either refer the difference back to the parties or inquire into the difference itself and make an order for final and conclusive settlement of the difference. In exercising its discretion about how to proceed in respect of unsettled Section 96 applications, the Board takes account of such factors as the nature and significance of the particular grievance, the character of the bargaining relationship between the parties and the relative capability of Board procedure to achieve a satisfactory disposition of the dispute.

In a considerable number of cases, the Board exercises its powers under Section 96(1)(c)(ii) to make a binding decision on the basis of the officer's report and submissions from the parties. Generally speaking, these involve minor grievances which the Board anticipates would not go to arbitration or which would place a disproportionate burden on a party required to go to arbitration for a decision. The parties require an authoritative judgment on the merits of their case and a reasonable appraisal of these merits can be made on the basis of investigation and written submissions. Typical examples of such grievances are trade union claims against an insolvent employer for unpaid wages or fringe benefits, or for failure to deduct and remit union dues; differences about minor discipline; and disputes as to the proper interpretation of specific contract language. The Board was able to dispose of 42 applications under Section 96(1) by administrative decision in the report year.

Each year, there is a sizeable number of grievances which an officer is not able to settle under Section 96 and where his report indicates that the matter is of considerable significance to the parties under the collective agreement and thus should receive the full consideration of an oral hearing. The Board's normal practice under Section 96(1)(c) is to refer these matters back to the parties for an arbitration hearing. This policy embodies the statutory principle that adjudication of key disputes under the agreement should be conducted in an environment which is under the control of the same parties who have negotiated the agreement. As well, the policy reflects the need for the proper allocation of the Board's own scarce hearing time amongst the four to five thousand cases which come before it each year. This policy is applied in such typical cases as these: unresolved disputes about the discharge of an employee where the facts are in dispute; unresolved seniority grievances

in connection with a layoff or promotion where the relative qualifications of the affected employees are at issue; cases involving major issues of contract interpretation which may be of significant value as a future precedent and require reference to extrinsic evidence and argument about the relevant arbitral jurisprudence; situations where the parties have developed their own specialized dispute resolution procedures, such as jurisdictional disputes in the construction industry, or specialized job evaluation programs. In 1985, the Board referred 109 such cases back to the parties for arbitration under their collective agreement.

There is one important exception to the Board's policy that grievances which require a formal hearing should be held under the arbitration procedure established under the collective agreement. Where the difference between the parties raises an issue of general importance within the statutory responsibilities of the Board, the matter will normally be set down for a hearing in front of a Panel of the Board which will then proceed to adjudicate the grievance and prepare formal reasons for its decision. The following are examples of cases in which the Board has exercised its discretion under Section 96(1)(c) to adjudicate the grievance itself: grievances about an issue, for example a discharge or work assignment, which has led to a wildcat strike or other form of industrial unrest; grievances which are tied to unfair labour practices, for example the alleged discharge of an employee because of union activities or the alleged breach by a union of its duty of fair representation to the grievor; grievances in which the primary issue in dispute is the proper application of key statutory concepts, for example "employee", "dependent contractor", "collective agreement"; grievances involving major issues of law and policy relating to the collective agreement and its proper interpretation, for example the proper scope of disciplinary demotion. In 1985, a

formal hearing by the Board resulted in the issuance of one order under Section 96(1)(c)(ii).

In summary, the Board disposed of 560 applications under Section 96(1) in the report year. Of these, a total of 403 were voluntarily settled, almost all through the efforts of an officer but, on a number of occasions, through the intervention of a Panel of the Board. Four of the applications were withdrawn, one was determined to be non-arbitrable and 109 were referred back to the parties. The remaining 43 were adjudicated by the Board. Forty-two of the latter turned on issues which could be disposed of on the basis of the officer's report and written submissions from the parties.

Tables 10 to 12 state in detail the results in applications brought under Section 96. Table 10 sets out the nature of the disposition and indicates which party was the beneficiary. Table 11 gives a breakdown of the cases by reference to the type of problem in dispute. Table 12 gives the industrial composition of the cases and the number of applications brought by unions and employers in each industry.

Over the last eleven report years, the relative proportions in the origin of applications under Section 96(1) have fluctuated only slightly with 91% to 97% of the applications coming from unions and 2% to 9% coming from employers. In 1985, 543 of the 560 applications disposed of came from unions (97%) and (3%) came from employers. One application was filed jointly by a union and an employer.

An analysis of the 594 applications received by the Board in 1985 (see Table 16, column 4) reveals that three unions filed over 30 applications. The Hotel & Restaurant Employees' & Bartenders' Union filed 198 applications (33% of the total);

the United Brotherhood of Carpenters and Joiners of America filed 48 applications (8% of the total); the United Food and Commercial Workers' International Union filed 35 applications (6% of the total). While these are large unions, it is observed that each union has a considerable number of relatively small bargaining units, each with its own (and often unique) collective agreement.

Of the 343 employers who were respondents to union complaints disposed of by the Board in 1985 (see Table 12), a total of 305 employers (or 89%) responded to either one or two complaints. Indeed, only two employers were the respondents to more than ten applications. Turning to the 16 cases disposed of in 1985 in which the employer filed the application, there is the same wide distribution amongst the parties involved. None of the 15 employers who filed Section 96(1) applications brought more than two applications.

The Board continues to conclude, on the basis of these findings of the wide distribution in the use of Section 96(1) either by unions, employers, or industry, that there is no specific abuse of the procedure.

In early 1976, the Board issued its first official policy statement under Section 27 of the Code.

> 27.(2) The board may formulate general guidelines to further the operation of this Act; but the board is not bound by those guidelines in the exercise of its powers or the performance of its duties.
>
> (3) In formulating general guidelines the board may request that submissions be made to it by any person.
>
> (4) The board shall make available in writing for publication all general guidelines formulated under this section, and their

amendments and revisions.

That statement (BCLRB No. 12/76, [1976] 2 Can LRBR 17) examines the powers of the Board under Section 96 and attempts to formulate general guidelines for the exercise of the Board's discretion. In addition, the policy statement sets out in detail the Board's views of the purpose of the Section 96 procedure and how, within the larger framework of the Code, the use of that procedure may promote the constructive settlement of grievances and thus secure and maintain industrial peace during the term of the collective agreement.

Section 108

The Board has another major role to play in the administration of the collective agreement under Part 6 of the Labour Code. Section 108 of the Code, enacted in mid-1975, gives the Board authority to review arbitration awards delivered under collective agreements.

> 108.(1) On application by a party affected by the decision or award of an arbitration board, the board may set aside the award, remit the matters referred back to the arbitration board, stay the proceedings before the arbitration board, or substitute the decision or award of the board for the decision or award of the arbitration board, on the ground that
>
> (a) a party to the arbitration has been or is likely to be denied a fair hearing; or
>
> (b) that the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Act, or another Act dealing with labour relations.

> (2) An application to the board under subsection (1) must be made in accordance with the regulations.

The Board has issued a number of major decisions outlining the view that it takes of Part 6 of the Labour Code as a whole, in terms of the scope of the Board's supervision of arbitrators contemplated by the Code.

In its first major decision under this provision, Simon Fraser University, BCLRB No. 16/76, [1976] 2 Can LRBR 54, the Board indicated clearly that Section 108 does not afford the losing party in an arbitration proceeding a full-blown right of appeal to the Board on the merits of the arbitrator's decision. The Board carefully limits its enquiry to whether the party has been denied a "fair hearing" (as found, for example, in Board of School Trustees of School District No. 68 (Nanaimo), BCLRB No. 68/76, [1977] 1 Can LRBR 39) or whether the award is inconsistent with the principles expressed or implied in the Code or any other legislation dealing with labour relations (as found, for example, in University of British Columbia, BCLRB No. 42/76, [1977] 1 Can LRBR 13). Within those standards formulated in Section 108, the Board will not overturn an arbitration award on the basis of alleged mistakes in findings of fact or interpretation of contract terms.

In the report year, the Board received 46 applications under Section 108 and disposed of 58 such applications. Of the 58, a total of 28 were brought by employers, 24 by unions, five by the grievors involved and one by an employee affected by the award. Twenty-one dealt with arbitration awards regarding discharge grievances. Of the 58 applications disposed of by the Board in 1985, five were withdrawn and 48 were dismissed.

The element of limited interference in grievance arbitration was reflected in the fact that in only five applications was the decision of the arbitrator set aside. In three cases, two of them involving the same award, the parties were directed to set up a new arbitration board to hear the grievance afresh. In one case, the grievance was referred back to the arbitrator to complete the award. In one case, the Board substituted another award.

Of the 53 applications decided by the Board, 15 were reviewed in a formal hearing and 50 were accompanied by reasons in a published Board decision.

F. Strikes, Lockouts and Picketing

The Board, charged with the primary responsibility for administering the law relating to strikes, lockouts and picketing in British Columbia, received 113 applications under Part 5 of the Labour Code in 1985 and disposed of 128 in the report year. The 128 cases dealt with by the Board included 53 concerning alleged illegal strike action, six concerning alleged illegal lockouts and 69 concerning only some form of picketing activity.

In exercising its jurisdiction in this regard, the Board balances attempts at speedy decision-making and its effort to deal effectively with the underlying factors which have produced the illegal work stoppage or picketing. Officers of the Ministry of Labour, as well as the Board's own staff and members are used by the Board in an attempt to achieve a satisfactory and mutually acceptable disposition of each dispute without the

need for a formal hearing or adjudication. In 1985, this procedure led to a settlement of 93 applications (73%, considerably higher than the 55% in 1984), including 40 of the 53 strike applications, five of the six lockout applications, and 48 of the 69 applications in the picketing area. Fourteen of these applications reached a formal hearing before an accommodation could be reached by the parties.

Where such voluntary disposition of an application is not achieved, a Panel is convened, evidence and argument is heard and a formal decision is made. In 1985, 35 applications led to formal adjudication by the Board, 25 resulted in Board orders and ten were dismissed.

Strikes and Lockouts

A fundamental principle of the Labour Code is that the legality of a strike depends upon its timing. The use of this economic weapon is prohibited through much of the life of the collective bargaining relationship. In particular, Section 93 requires that all disputes arising under a collective agreement are to be resolved, without stoppage of work, either by arbitration or other techniques devised by the parties. Section 79(1) complements that requirement by prohibiting strikes during the life of a collective agreement. During the 1985 report year, the Board disposed of 53 applications in this area. Forty of these were settled and the Board adjudicated the remaining 13.

Of these 13 applications, 12 alleged threatened or actual illegal job action during the term of a collective agreement

contrary to Section 79(1). In one of these cases, the Board was asked to rule on whether or not a collective agreement was in effect. In the 12 cases, actual or threatened work stoppages, work slowdowns or refusals to perform specific duties were generated by real or felt grievances on the part of the employees concerning the manner in which the contract was being administered or by clauses in the contract allegedly allowing such job action. In 11 of the 12 cases, the Board ruled a violation had occurred or would occur. The Board rejected the application in one case, refusing to issue an opinion that it would be illegal to refuse to cross a picket line.

The legality of a strike is subject to certain preconditions under the Code. The parties must have bargained collectively, in good faith, with respect to the dispute and must have failed to conclude a collective agreement. The trade union must conduct a strike vote by secret ballot among the employees in the unit affected and must give 72 hours written notice (or such longer period as may be directed by the Board under Section 81(4) of the Code) to the employer that a strike is to occur. If a mediation officer has been appointed in the dispute, the strike must be postponed until the officer has reported to the Minister and the union has been so advised. Only after each of these conditions has been satisfied does a strike become timely and legal. None of the strike applications adjudicated by the Board in 1985 alleged a violation of one or another of these requirements.

One case requested relief under Section 90 of the Code from certain declarations. The Board denied the relief requested.

The provisions of the Code with respect to the legality of employer lockouts mirror those which define the legality of

employee strikes. During the 1985 report year, the Board disposed of six complaints alleging illegal lockouts. Five of the six were settled without formal Board adjudication. The Board dismissed one case.

Picketing

When parties to a collective bargaining relationship reach an impasse in negotiating the terms of their collective agreement, either side may, subject to the legal restrictions already noted, use the economic sanction of a work stoppage to enforce its demands. The employer is legally entitled to attempt to continue operations by replacing the strikers so long as he does not use professional strike breakers. The union, on the other hand, is entitled to attempt to stop the employer's efforts to maintain his operations. The primary measure recognized by the law for that purpose is peaceful picketing within the limits permitted by the Labour Code. In the 1985 report year, the Board disposed of 69 applications pertaining to picketing. Forty-eight of these were settled and the Board adjudicated the remaining 21.

Picketing is legal only when it is carried on in connection with a lockout or a lawful strike. Therefore, picketing designed to force an employer to recognize the picketing union is prohibited by the Code. One case of this type was adjudicated by the Board and requested a declaratory opinion regarding pickets which had been removed. The Board declined to issue an opinion.

Another principle of the Code is that the legitimate target of picketing is the struck employer and not an uninvolved third party. The one apparent exception in the Code, the "ally doctrine" actually seems to prove the rule. By involving itself in a bargaining dispute on the side of the struck employer against the striking union members, the ally forfeits its neutral status and exposes itself to picketing at its place of business, operations or employment. Five applications, filed by unions, adjudicated in 1985 dealt with anticipated picketing directed at secondary employers which the unions alleged had allied themselves with employers involved in industrial disputes. These applications requested declarations regarding the "ally" status of these employers. The Board granted one of these applications on the grounds the employer was an ally and denied the other four applications. Another three applications were received from employers for relief from picketing, occurring because the unions alleged the employers were allies. The Board ruled the picketing was unlawful for two of the applications. One was rejected because the Board ruled the activity did not constitute "picketing" under the Labour Code.

Where several employers share a common site of operations, a picket line directed at one of these employers is not a discriminating instrument likely to affect only its intended target. The Code directs the Board to reasonably restrict the picketing to the struck employer, or to the employer causing the lockout, or to an ally of the employer. The Board dealt with four cases of this type in 1985. The Board restricted the pickets in three of the four cases and dismissed the fourth on the basis that the applicant did not have the standing to make the application.

In addition to the above cases, the Board dealt with two cases involving pickets at actual or alleged secondary locations

of employers involved in industrial disputes. In one case, the Board partially restricted the pickets and in the other, the picketing was held to be inlawful.

One picketing case ruled on by the Board resulted from real or felt grievances in a situation where a collective agreement was in effect between the parties involved. In this case, the picketing was deemed unlawful.

Picketing by unknown persons protesting a decision by the Board resulted in five of the picketing cases decided by the Board. In all five cases, the Board ruled a violation had occurred.

VIII. STATISTICAL APPENDIX

A. Introduction

The following tables provide an analysis of the applications filed with and disposed of by the Labour Relations Board in 1984 and 1985.

In a few cases, multiple decisions resulted from one application. These were usually counted as single decisions. However, for two types of applications, where the volume of multiple decisions was higher, different methods were used. Board rulings regarding the status of employees under Section 34 were counted individually -- that is, one application requesting ten rulings was counted as ten decisions, while a withdrawal of such an application was counted as one. Applications to vary accreditations requested varying numbers and types of decisions. Each application was counted as one decision but a footnote indicates the number of employers who were affected by these applications.

An application involving a dispute is classified as withdrawn if the request for withdrawal comes prior to the involvement of an officer or a Board panel. An application withdrawn following such involvement is classified as settled.

It is important to note when using these figures as a guide that the work content of individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can

vary widely as well, from category to category and from application to application.

B. 1984-85 Comparisons

Applications Filed

In 1985, 4280 applications were filed with the B.C. Labour Relations Board, a decrease of 9% from applications filed in 1984.

In 1985, the Board experienced an increase from 1984 in seven of the 19 categories shown in Table 1; applications to vary a certification (55%), for decertification (36%), for an interpretation of the Labour Code as it applies to the collective bargaining relationship (31%), classified as miscellaneous (7%), alleging unfair labour practices (5%), for certification (1%) and for accreditation (from 0 to 1).

Applications filed decreased from 1984, in 11 categories; applications to cancel an accreditation (100%), to alter the terms and/or conditions of employment (83%), regarding alleged illegal strikes, lockouts or picketing (47%), for a successor status declaration (45%), to review an arbitration award (39%), to vary an accreditation (26%), for the appointment of a strike or lockout observer (24%), for the appointment of an arbitrator (23%), for reconsideration of a Board decision (18%), for the appointment of an officer to settle a grievance (7%), for a common employer declaration (7%).

One category remained unchanged; applications for first contract arbitration.

Applications Disposed of

In 1985, 4231 applications were disposed of by the B.C. Labour Relations Board, a decrease of 10% from 1984.

In 1985, the Board experienced an increase from 1984, in six of the 19 categories shown in Table 2; applications to vary a certification (73%), to cancel a certification (66%), to vary an accreditation (15%), alleging unfair labour practices (9%), classified as miscellaneous (2%) and for accreditation (from 0 to 1).

Applications disposed of decreased from 1984 in twelve categories; applications to alter the terms and/or conditions of employment (86%), to cancel an accreditation (50%), for a successor status declaration (45%), regarding alleged illegal strikes, lockouts and picketing (39%), for a common employer declaration (29%), for reconsideration of a Board decision (27%), for the appointment of a strike or lockout observer (24%), for the appointment of an arbitrator (23%), for certification (11%), for the appointment of an officer to settle a grievance (6%), to review an arbitration award (5%) and for an interpretation of the Labour Code as it applies to the collective bargaining relationship (1%).

One category remained unchanged; applications for first contract arbitration.

C. General Information

In addition to the figures shown in the following tables, in 1985, the Board, of its own motion, made 212 decisions. Most of these were administrative and no employees were deprived of bargaining rights as a result of these decisions. Breaking down the 212 decisions, 140 were to vary certifications, 36 were to cancel or override certifications, 30 were to vary accreditations, and the remaining were decisions made under various other Sections of the Code.

Votes

For applications disposed of in 1985, 369 votes were conducted.

There were 245 votes involving applications for certification; one of these involved two applications for certification and another involved seven applications.

The 245 votes involved 252 certification applications. There were 220 of these applications, involving 3553 eligible voters, filed under Section 39(1). Of these, 172 (or 78%) were successful. Of the 36 contested applications under Section 39(2), the Board ordered votes for 32 applications, involving 3297 eligible voters, and the applicant won 17 (or 53%) of them (See Table 9).

Twenty-six votes involved variance of certification applications. Six of these sought to delete a portion of the presently certified bargining unit and the other 20 to expand the unit.

Ninety-four votes (ordered under Section 52) involved decertifications. In 84 cases, the union was decertified. The total number of employees eligible to vote for or against decertification was 1200.

Three votes involved successorship applications. One vote involved a common employer application.

Hearings

Records indicate there were 489 formal hearings held in 1985. These hearings dealt with a varying number and type of application and were conducted over a varying number of days. The 489 formal hearings included 245 expedited hearings for certification applications.

Numerous informal meetings between the parties to a dispute and various employees of the Board were held during the year. In the majority of cases, it was not necessary for the Board to proceed with a formal hearing following those meetings.

Certifications

Tables 7, 8A and 9 outline the results of the certification applications which were disposed of by the Board in 1985. Applying the criteria outlined in Table 8A, in 1985 the percentage of successful applications to certify unorganized employees was 77%.

In 1985, two certifications were granted under Section 8(4)(e).

There were 20 applications in 1985 to vary certifications so as to expand the bargaining unit; 12 of these were granted adding 135 employees to existing certifications. There were votes held to decide all of these applications.

There were 214 applications to cancel certifications dealt with by the Board, 110 filed by employees, 99 filed by employers and five filed by the union involved. (See Table 8B). Ninety-four were decided with a vote of the employees involved. For 84 of these applications, the employees voted to cancel the certification. Eighty-nine applications were cancelled without a vote. The Board rejected 28 of the applications (in ten of these cases, the employees voted in favour of the union), and 13 were withdrawn. The Board of its own motion cancelled or overrode 36 certifications for administrative reasons. None of these resulted in a loss of bargaining rights for the employees involved.

In addition to the above, one certification was cancelled following an appeal.

There were 297 applications regarding successor status. While the vast majority of these asked for a declaration of successor rights a few dealt with such other issues as seniority rights or collective agreement status. For 100 of the 297 applications, one union would be succeeding another; 98 of these were granted and two were withdrawn. For the remaining 197, one employer would be succeeding another; 126 of these were granted, 23 were rejected and 48 were withdrawn.

D. Miscellaneous

Table 2 indicates 175 miscellaneous decisions disposed of by the Board in 1985. These include the following.

There were 94 applications under Section 28 (excluding applications pertaining to Part 5 of the Code). These included 19 applications alleging that the terms and conditions of employment had been altered in violation of the Code, 51 applications alleging failure to execute or comply with a collective agreement and two alleging improper conduct in the negotiation of a collective agreement under Section 63 of the Code. The balance alleged violations of various other Sections of the Code.

Eight applications for religious exemption were disposed of. Four of these were granted by the Board, three were dismissed and one application was withdrawn.

The Board disposed of nine applications where one of the parties felt there had been an undue delay in negotiating a disputed issue. Eight of these were settled without a Board

decision. In one case, the parties were ordered to take the dispute through the grievance procedure.

Eleven applications for a declaratory opinion (excluding applications pertaining to Part 5 of the Code) were disposed of by the Board. In three of these cases, an opinion was issued.

The remaining 53 applications referred to a variety of Sections of the legislation administered by the Board.

ACHIEVEMENT OF A FIRST CONTRACT FOLLOWING CERTIFICATION

In the past ten Annual Reports, data regarding the degree of success in achieving a first contract was outlined for certifications granted in the period January 1, 1974, to June 30, 1983.

This study has been continued for two more six-month periods -- July 1, 1983, to December 31, 1983, and January 1, 1984, to June 30, 1984.

As stated in the 1984 Report, data was again retrieved from three sources -- the collective agreement records of the Labour Relations Board and of the Ministry of Labour in Victoria, and a questionnaire sent to trade unions regarding the status of bargaining.

The criteria for measuring the time elapsing remain the same. To compute the time required to achieve a contract, the time from the date of certification to the date of the signing of the collective agreement was calculated. Where the signing date was not available, the date the agreement was received by the Labour Relations Board was used. In the few instances where neither date was available, it was assumed the contract was signed within seven to twelve months following certification.

Again, the results must be qualified by the fact that 13% of the certifications (9% in the 1984 Annual Report) and 9% of the employees (14% in the 1984 Annual Report) were omitted from the study because contract data was not available.

The following is a summary of the results of this study since it began January 1, 1974. It should be noted that a large proportion (76% in the periods studied for this Report) of the units which obtain a contract prior to certification are small construction industry units.

Certifications Granted to Unorganized Employees in	Percentage Achieving a Contract Prior to Certification		Percentage Without a Contract 18 Months after Certification	
	Units	Employees	Units	Employees
the 1st half of 1974	51.5%	52.0%	9.0%	4.5%
the 2nd half of 1974	35.4%	10.1%	10.6%	6.5%
the 1st half of 1975	40.6%	36.0%	13.0%	10.6%
the 2nd half of 1975	57.9%	48.6%	11.2%	11.0%
the 1st half of 1976	54.1%	51.9%	10.1%	4.0%
the 2nd half of 1976	45.5%	29.7%	15.3%	11.5%
the 1st half of 1977	49.1%	29.4%	12.3%	19.9%
the 2nd half of 1977	49.2%	26.7%	19.5%	32.5%
the 1st half of 1978	43.1%	27.6%	10.6%	18.3%
the 2nd half of 1978	41.2%	17.5%	17.5%	33.6%*
the 1st half of 1979	43.8%	24.1%	14.8%	16.3%
the 2nd half of 1979	38.0%	17.4%	15.5%	25.3%
the 1st half of 1980	42.7%	18.8%	11.8%	6.4%
the 2nd half of 1980	42.8%	30.2%	10.0%	8.8%
the 1st half of 1981	45.3%	27.7%	12.8%	11.2%
the 2nd half of 1981	54.2%	38.7%	12.8%	11.3%
the 1st half of 1982	57.2%	37.1%	13.8%	17.5%
the 2nd half of 1982	65.9%	54.2%	12.7%	13.4%
the 1st half of 1983	66.3%	41.7%	14.4%	18.7%
the 2nd half of 1983	47.3%	39.4%	22.0%	27.4%
the 1st half of 1984	40.3%	20.8%	28.8%	31.1%

* Another 22.1% of these employees had achieved a contract more than 18 months after certification but before the date of this report (as had a certain, but much smaller percentage, in the other time periods).

FIRST CONTRACT ANALYSIS

CERTIFICATIONS GRANTED TO UNORGANIZED EMPLOYEES

	2ND HALF 1983	1ST HALF 1984
Number of Certifications Granted:	206	127
Less Certifications Where No Contract Information Was Available:	20	23
Number of Certifications In Study:	186	104
Number of Employees Covered by Above Certifications:	2877	1489
Less Employees for Whom No Contract Information Was Available:	136	275
Number of Employees Studied:	2741	1214

PERIOD OF TIME TO ACHIEVE A FIRST CONTRACT

Achieving a Contract	Number of Bargaining Units		Percentage of Bargaining Units	
	2ND HALF 1983	1ST HALF 1984	2ND HALF 1983	1ST HALF 1984
Prior to Certification	88	42	47.3%	40.3%
Within 6 Months of Certification	105	48	56.4%	46.2%
Within 12 Months of Certification	136	72	73.1%	69.2%
Within 18 Months of Certification	145	74	78.0%	71.2%
Balance Remaining Without a First Contract, 18 Months After Certification	41	30	22.0%	28.8%

Achieving a Contract	Number of Employees		Percentage of Employees	
	2ND HALF 1983	1ST HALF 1984	2ND HALF 1983	1ST HALF 1984
Prior to Certification	1079	253	39.4%	20.8%
Within 6 Months of Certification	1174	332	42.8%	27.3%
Within 12 Months of Certification	1530	673	55.8%	55.4%
Within 18 Months of Certification	1990	837	72.6%	68.9%
Balance Remaining Without a First Contract, 18 Months After Certification	751	377	27.4%	31.1%

FIRST CONTRACT ANALYSIS (cont.)

DATA REGARDING THE STATUS OF NEGOTIATIONS, 18 MONTHS FOLLOWING CERTIFICATION, OF THE REMAINING BARGAINING UNITS AND EMPLOYEES, INDICATES THE FOLLOWING:

	Number of Bargaining Units		Number of Employees	
	2ND HALF 1983	1ST HALF 1984	2ND HALF 1983	1ST HALF 1984
Certification was cancelled	14	14	301	169
Contract was achieved after 18 months elapsed	4	4	139	79
Negotiations proceeding	4	1	26	3
Negotiations stalled	6	4	66	35
There are presently no employees in the bargaining unit	5	3	81	36
Employer temporarily closed down	2	3	19	51
Employer has gone out of business	5	1	31	4
Employees on strike	1	0	88	0

TABLE 1

APPLICATIONS AND COMPLAINTS FILED 1984-1985

TYPE OF APPLICATION	1984	1985
Certification		
Applications	329	332
Variances	412	637
Cancellations	169	230
Accreditation		
Applications	0	1
Variances	* 53	** 39
Cancellations	2	0
Declaration of Successor Status	426	236
Appointment of an Officer to resolve a dispute where a collective agreement is in effect	641	594
Complaints of unfair labour practices	332	348
To alter conditions of employment	12	2
For an interpretation of the Labour Code as it applies to the collective bargaining relationship	127	167
For a Board enquiry to settle the terms and conditions of a first collective agreement	0	0

cont.

TABLE 1 (cont.)

APPLICATIONS AND COMPLAINTS FILED 1984-1985

TYPE OF APPLICATION	1984	1985
For a Board order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	214	113
To treat several entities as one employer	85	79
For a review of an arbitration award	75	46
For the appointment of an observer of a strike or lockout poll	377	286
For the appointment of an arbitrator	1066	820
Miscellaneous	168	180
For reconsideration of a decision	208	170
TOTAL	4696	4280

* To add 28 employers, to delete 46 employers and to vary the names and/or addresses of 5 employers.

** To add 23 employers, to delete 34 employers and to vary the names and/or addresses of 4 employers and 2 associations.

Note: For further elaboration of the figures in Table 1, refer to the Statistical Appendix.

TABLE 2

APPLICATIONS AND COMPLAINTS DISPOSED OF 1984-1985

TYPE OF APPLICATION	1984	1985
Certification		
Applications	376	333
Variances	347	601
Cancellations	129	214
Accreditation		
Applications	0	1
Variances	* 40	** 46
Cancellations	2	1
Declaration of Successor Status	544	297
Appointment of an Officer to resolve a dispute where a collective agreement is in effect	596	560
Complaints of unfair labour practices	320	350
To alter conditions of employment	14	2
For an interpretation of the Labour Code as it applies to the collective bargaining relationship	140	138
For a Board enquiry to settle the terms and conditions of a first collective agreement	0	0

cont.

TABLE 2 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED OF 1984-1985

TYPE OF APPLICATION	1984	1985
For a Board order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	211	128
To treat several entities as one employer	94	67
For a review of an arbitration award	61	58
For the appointment of an observer of a strike or lockout poll	377	286
For the appointment of an arbitrator	1066	820
Miscellaneous	172	175
For reconsideration of a decision	211	154
TOTAL	4700	4231

* 26 employers were added to accreditations, 17 were deleted and the names and/or addresses of 6 employers and one association were varied. Requests to delete 5 employers were denied. Requests to add 2 employers, to delete 4 employers and to vary the name of one employer were withdrawn.

** 21 employers were added to accreditations, 14 were deleted and the names and/or addresses of 2 employers and 2 associations were varied. Requests to delete 11 employers were denied. Requests to delete 15 employers were withdrawn.

Note: For further elaboration of the figures in Table 2, refer to the Statistical Appendix.

TABLE 3

APPLICATIONS AND COMPLAINTS DISPOSED OF THAT WERE DEALT WITH AT A FORMAL HEARING AND/OR WERE DEALT WITH IN A FORMAL BOARD DECISION 1984-1985

TYPE OF APPLICATION	NO./APPLICATIONS AT FORMAL HEARINGS		NO./APPLICATIONS IN FORMAL DECISIONS *	
	1984	1985	1984	1985
Certification				
Applications	141	249	64	40
Variances	20	31	17	14
Cancellations	13	31	21	38
Accreditation				
Applications	0	0	0	0
Variances	1	0	6	8
Cancellations	1	0	2	1
Declaration of Successor Status	41	47	** 221	34
Appointment of an Officer to resolve a dispute where a collective agreement is in effect	12	5	13	5
Complaints of unfair labour practices	98	113	82	82
To alter conditions of employment	1	0	2	0
For an interpretation of the Labour Code as it applies to the collective bargaining relationship	48	38	63	38

cont.

TABLE 3 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED OF THAT WERE DEALT WITH AT A FORMAL HEARING AND/OR WERE DEALT WITH IN A FORMAL BOARD DECISION 1984-1985

TYPE OF APPLICATION	NO./APPLICATIONS AT FORMAL HEARINGS		NO./APPLICATIONS IN FORMAL DECISIONS *	
	1984	1985	1984	1985
For a Board enquiry to settle the terms and conditions of a first collective agreement	0	0	0	0
For a Board order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	103	48	83	14
To treat several entities as one employer	43	35	26	17
For a review of an arbitration award	16	15	42	50
Miscellaneous	56	61	42	43
For reconsideration of a decision	74	19	141	82
TOTAL	668	692	** 825	466

* In 1983, the Board changed its procedures regarding published decisions. Letter decisions and formal decisions were consolidated into one series. Statistics for 1983 on reflect this consolidated series and cannot be compared with previous years where only formal decisions were considered.

** Includes 189 Section 54 applications by the Teamsters dealt with in one decision.

NOTE: The Board may deal with more than one application and/or complaint at one formal hearing. In 1985, the Board held 489 formal hearings.

TABLE 4

APPLICATIONS AND COMPLAINTS DISPOSED OF BY TYPE AND DISPOSITION 1984-1985

TYPE OF APPLICATION		1984	1985
Certification			
Applications:	Granted	238	187
	Rejected	66	85
	Withdrawn	72	61
Variances:	Granted	293	557
	Rejected	17	15
	Withdrawn	37	29
Cancellations:	Granted	96	173
	Rejected	18	28
	Withdrawn	15	13
Accreditation			
Applications:	Granted	0	0
	Rejected	0	0
	Withdrawn	0	1
Variances:	Granted	30	35
	Rejected	5	9
	Withdrawn	5	2
Cancellations:	Granted	2	1
	Rejected	0	0
	Withdrawn	0	0
Declaration of Successor Status			
	Granted	468	224
	Rejected	28	23
	Withdrawn	48	50

cont.

TABLE 4 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED OF BY TYPE AND DISPOSITION 1984-1985

TYPE OF APPLICATION		1984	1985
Appointment of an Officer to resolve a dispute where a collective agreement is in effect			
	Settled	399	403
	Board Arbitration	51	43
	Referred Back to Parties	141	109
	Not Arbitrable	3	1
	Withdrawn	2	4
Complaints of Unfair Labour Practices			
	Settled	213	231
	Order Issued	23	22
	Rejected	82	93
	Withdrawn	2	4
To alter conditions of employment			
	Granted	8	1
	Rejected	1	0
	Withdrawn	5	1
For an interpretation of the Labour Code as it applies to the collective bargaining relationship			
	Ruling Made	110	83
	Withdrawn	30	55

cont.

TABLE 4 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED OF BY TYPE AND DISPOSITION 1984-1985

TYPE OF APPLICATION	1984	1985
For a Board enquiry to settle the terms and conditions of a first collective agreement		
Settled	0	0
Contract Imposed	0	0
Rejected	0	0
Withdrawn	0	0
For a Board order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing		
Settled	116	93
Order or opinion Issued	63	25
Rejected	32	10
To treat several entities as one employer		
Granted	15	14
Rejected	21	8
Withdrawn	58	45
For review of an arbitration award		
Granted	7	5
Rejected	44	48
Withdrawn	10	5

cont.

TABLE 4 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED OF BY TYPE AND DISPOSITION 1984-1985

TYPE OF APPLICATION		1984	1985
For the appointment of an observer of a strike or lockout poll			
	Appointment Made	377	286
For the appointment of an arbitrator			
	Request Acknowledged	1066	820
Miscellaneous			
	Settled	88	90
	Granted	15	11
	Order or Opinion Issued	22	31
	Rejected	36	35
	Withdrawn	11	8
For reconsideration of a decision			
	Dismissed	143	105
	Varied	21	13
	Reversed	19	7
	Withdrawn	28	29
	TOTAL	4700	4231

NOTE: The category "Order or Opinion Issued" includes all Board rulings that a violation occurred or that a specific activity should be restricted. Formal orders were not necessarily issued.

The category "Rejected" includes decisions where the Board deems no violation of the Labour Code has occurred as well as decisions where the Board determines no further action is warranted.

TABLE 5

APPLICATIONS FOR CERTIFICATION FILED 1984-1985

INDUSTRY	NUMBER OF APPLICATIONS 1984	1985	NUMBER OF EMPLOYEES * 1984	1985
Manufacturing				
Food & Beverage	7	12	500	545
Wood Products	11	13	520	602
Metals (Refining & Fabrication)	9	16	77	95
Machinery, Transportation Equipment, Electrical Products	2	3	48	49
Miscellaneous	33	24	511	683
SUB-TOTAL	62	68	1656	1974
Construction	114	83	708	557
Trade and Service				
Trade	28	42	270	579
Education & Health	21	25	522	988
Municipal	0	5	0	84
Miscellaneous	85	77	2422	3239
SUB-TOTAL	134	149	3214	4890
Other Industries				
Mining	2	2	1381	105
Transportation	16	29	365	664
Communications & Other Utilities	1	1	19	12
SUB-TOTAL	19	32	1765	781
TOTAL **	329	332	7343	8202

* The estimate of employees per application is derived from the estimate on the union application. Variances do occur between the time of application and the time of disposal of the application.

** Includes some multiple counting where more than one union applied to cover the same group of employees.

APPENDIX TO TABLE 5

NUMBER OF EMPLOYEES IN BARGAINING UNIT 1984-1985

Number of Employees Per Bargaining Unit Applied For	Number of Applications Filed 1984	1985
0 - 10	204	194
11 - 20	56	52
21 - 30	24	28
31 - 40	12	14
41 - 50	8	6
51 - 60	4	7
61 - 70	4	2
71 - 80	3	6
81 - 90	2	6
91 - 100	0	3
101 - 200	7	11
201 - 300	2	1
Over 300	3	2
Median Class of Employees Per Bargaining Unit Applied For:	0 - 10	0 - 10
Average Number of Employees Per Bargaining Unit Applied For:	22	25

TABLE 6

APPLICATIONS FOR CERTIFICATION GRANTED 1984-1985

INDUSTRY	NUMBER OF APPLICATIONS 1984	1985	NUMBER OF EMPLOYEES * 1984	1985
Manufacturing				
Food & Beverage	5	6	223	344
Wood Products	7	5	299	222
Metals (Refining & Fabrication)	7	7	26	34
Machinery, Transportation Equipment, Electrical Products	1	2	8	44
Miscellaneous	26	13	387	128
SUB-TOTAL	46	33	943	772
Construction	82	42	417	236
Trade and Service				
Trade	19	27	151	226
Education & Health	12	21	355	751
Municipal	0	3	0	60
Miscellaneous	69	49	1749	1033
SUB-TOTAL	100	100	2255	2070
Other Industries				
Mining	1	1	340	1041
Transportation	9	11	244	211
Communications & Other Utilities	0	0	0	0
SUB-TOTAL	10	12	584	1252
TOTAL	238	187	4199	4330

* The estimate of employees per application is derived from the estimate on the union application. Variances do occur between the time of application and the time of disposal of the application.

TABLE 7

CERTIFICATIONS REJECTED IN 1985

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	NUMBER OF EMPLOYEES
A. Organized Employees		
1. Employees to be included in a larger unit already represented	0	0
2. Less than a majority were union members at the date of application	2	1198
3. Applicant union rejected by employee vote	16	1103
4. Application untimely	4	63
5. Bargaining unit inappropriate	0	0
6. Applicant does not meet the definition of a trade union	0	0
SUB-TOTAL	22	2364
B. UNORGANIZED EMPLOYEES		
1. Bargaining unit not under the jurisdiction of the Board	1	15
2. Less than 2 employees in the bargaining unit	2	N/A
3. Employees to be included in a larger unit already represented	3	29
4. Employees to be included in a larger unit not yet (but subsequently) represented	0	0

cont.

TABLE 7 (cont.)

CERTIFICATIONS REJECTED IN 1985

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	NUMBER OF EMPLOYEES
5. Less than the legal membership requirement signed up by the union at the date of application	1	70
6. Employees voted for no union	49	948
7. Employees voted for certification of another union	0	0
8. Bargaining unit inappropriate	7	62
9. Applicant does not meet the definition of a trade union	0	0
SUB-TOTAL	63	1124
TOTAL	85	3488

cont.

TABLE 7 (cont.)

CERTIFICATIONS REJECTED IN 1985

C.	Number of Certification Applications Disposed of:	333
	Less: Applications Withdrawn	
	Applications to cover presently organized employees	
	Applications not under the jurisdiction of the Board	
	Applications for an inappropriate Bargaining unit	
	Applications where employees are or will be represented through another certification	
	NET	221
D.	Certification Applications for Unorganized Employees Rejected Because of:	
	Failure to meet membership requirements, or	
	An employee vote against the union	50
	D as a percentage of C:	23%

TABLE 8A

CERTIFICATION APPLICATIONS DECIDED BY THE BOARD IN 1985

APPLICATIONS	GRANTED	REJECTED	TOTAL
Unorganized Employees *	171	63	* 234
Organized Employees	16	22	38
TOTAL	187	85	272

* Deleting the 13 applications for unorganized employees which were rejected because they did not come under the jurisdiction of the Board, because the employees involved were represented through another certification, because the bargaining unit was inappropriate or because the applicant did not meet the definition of a trade union, the percentage of successful applications to certify unorganized employees can be expressed as 171 out of 221 or 77%.

NUMBER OF EMPLOYEES	GRANTED	REJECTED	TOTAL
Unorganized Employees	2387	1124	3511
Organized Employees	1943	2364	4307
TOTAL	4330	3488	7818

ATTEMPTS BY ANOTHER UNION TO REPLACE AN INCUMBENT UNION	SUCCESSFUL	UNSUCCESSFUL	TOTAL
Number of attempts	*17	19	36
Number of Employees Involved **	*1957	2343	4300

* For one of the successful attempts, involving 14 employees, an existing certification with the successful union was varied to include these employees.

** The balance of the organized employees were involved in unopposed representation changes or attempts to enlarge or fragment existing bargaining units.

TABLE 8B

APPLICATIONS TO CANCEL CERTIFICATIONS DISPOSED OF 1984-1985

	NUMBER OF APPLICATIONS	
	1984	1985
Filed by the Employee(s)		
Granted	65	84
Rejected	11	18
Withdrawn	6	8
TOTAL	82	110
Filed by the Employer		
Granted	26	84
Rejected	7	10
Withdrawn	9	5
TOTAL	42	99
Filed by the Union		
Granted	4	5
Rejected	0	0
Withdrawn	0	0
TOTAL	4	5
Summary		
Granted	96	173
Rejected	18	28
Withdrawn	15	13
TOTAL	* 129	214

* One application was filed jointly by an employer and a union.

TABLE 9

CERTIFICATION APPLICATIONS RESULTING IN A VOTE IN 1985

A.	Number of applications pertaining to unorganized employees which resulted in a vote	220 out of 236* or 93%
	Number of successful applications	172 **
	Number of unsuccessful applications	48
	Percentage of successful applications	78%
	Total number of eligible voters involved in the 220 applications ***	3553
B.	Number of applications involving attempts by another union to replace an incumbent union, which resulted in a vote	32 out of 36 or 89%
	Number of successful applications	17
	Number of unsuccessful applications	15
	Percentage of successful applications	53%
	Total number of eligible voters involved in the 32 applications ***	3297

* A total of 272 new certification applications were decided upon by the Board in the report year 1985. Of these, 36 applications involved attempts by a union to win the right to represent an entire bargaining unit already actively represented by another union.

** For three of the successful applications, an existing certification was varied to include the employees.

*** This figure can vary from the number of employees originally applied for. In some cases, two or more applications were received resulting in one vote and thus one group of eligible voters.

TABLE 10

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF 1984-1985

NATURE OF THE DISPOSITION	NUMBER OF APPLICATIONS 1984	1985
Settled		
1. Issue Disputed		
a) Advantage to Union	203	186
b) Advantage to Employer	61	62
c) Advantage Not Decisive	37	42
d) Advantage Unknown	66	82
2. Issue Not Disputed	32	31
SUB-TOTAL	399	403
Board Arbitration		
1. Issue Disputed		
a) Advantage to Union	14	10
b) Advantage to Employer	5	0
2. Issue Not Disputed	32	33
SUB-TOTAL	51	43
Referred Back		
(All Issues Disputed; Advantage Unknown)	141	109
Not Arbitrable (all issues disputed)		
a) Advantage to Union	0	0
b) Advantage to Employer	3	1
SUB-TOTAL	3	1
Withdrawn	2	4
TOTAL	596	560

cont.

TABLE 10 (cont.)

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF 1984-1985

NATURE OF THE DISPOSITION	NUMBER OF APPLICATIONS 1984	1985
Summary		
1. Issue Disputed		
a) Advantage to Union	217	196
b) Advantage to Employer	69	63
c) Advantage Not Decisive	44	52
d) Advantage Unknown	207	191
SUB-TOTAL	537	502
2. Issue Not Disputed	57	54
3. Withdrawn	2	4
TOTAL	596	560

Note: "Board Arbitration" includes all decisions by the Board finalizing a grievance, even though a formal Order may not have been issued.

The advantage goes to the trade union if they gain anything at all from filing the application.

"Not Decisive" includes those withdrawn because it was decided to process the grievance through other means.

"Not Disputed" covers those situations where the employer acknowledges the legitimacy of the grievance but is unable to settle because of financial difficulties.

TABLE 11

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF IN 1985

GRIEVANCE PERTAINED PRINCIPALLY TO *	NUMBER OF APPLICATIONS
1. Dismissal or suspension	113
2. Wages	100
3. Contributions for fringe benefits	68
4. Layoff	60
5. Use of non-union personnel (including subcontractors)	56
6. Allocation of work	53
7. Reprimand	19
8. Promotion	15
9. General collective agreement compliance	10
10. Seniority	9
11. Union dues	7
12. Inclusion of a position in the bargaining unit	7
13. Work expenses	6
14. Hours of work (including vacation, leaves of absence)	5
15. Sickness and accident benefit	4
16. Job description	4
17. Jurisdiction	4

cont.

TABLE 11 (cont.)

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF IN 1985

GRIEVANCE PERTAINED PRINCIPALLY TO *	NUMBER OF APPLICATIONS
18. Grievance procedure	4
19. Mandatory retirement	3
20. Union membership	2
21. Job classification	1
22. Demotion	1
23. Transfer	1
24. Safety	1
25. Bereavement leave	1
26. Professional development fund	1
27. Life insurance benefit	1
28. Benefits for part-time workers	1
29. Maternity benefit	1
30. Alleged harassment	1
31. Technological change	1

* Frequently an application indicated more than one type of grievance involved. However, for the above analysis, the apparent major cause of the dispute was chosen to characterize the application.

TABLE 12

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF IN 1985

INDUSTRY	FILED BY UNION	FILED BY EMPLOYER	TOTAL
Manufacturing			
Food & Beverage	21	1	22
Wood Products	22	0	22
Metals (Refining & Fabrication)	12	1	13
Machinery, Transportation Equipment, Electrical Products	21	0	21
Miscellaneous	37	0	37
SUB-TOTAL	113	2	115
Construction	86	1	87
Trade and Service			
Trade	23	0	23
Education & Health	27	5	32
Municipal	13	1	14
Miscellaneous	224	6	* 230
SUB-TOTAL	287	12	299
Other Industries			
Mining	15	0	** 16
Transportation	41	1	42
Communications & Other Utilities	1	0	1
SUB-TOTAL	57	1	59
TOTAL	543	16	** 560

* 194 of these originated in the hotel, restaurant and beverage dispensing industry.

** One applications was filed jointly by an employer and a union.

cont.

TABLE 12 (cont.)

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER
TO SETTLE A GRIEVANCE UNDER AN EXISTING
COLLECTIVE AGREEMENT DISPOSED OF IN 1985

ANALYSIS OF APPLICATIONS FILED BY AN EMPLOYER

EMPLOYER NAME	NUMBER OF APPLICATIONS
University of British Columbia	2
Bud Grants Hotel Ltd.	1
Inter-City Express Ltd.	1
Pacific Palisades Hotel	1
Prince Rupert Fishermen's Co-operative Association	1
Regent Construction Co. (1974) Ltd.	1
School District No. 43 (Coquitlam)	1
Sheraton Landmark Hotel	1
District of Surrey	1
Tepper Hotels Ltd.	1
Terrace Association for the Mentally Retarded	1
Three Jay Holdings Ltd.	1
University of British Columbia Health Sciences Centre Hospital Society	1
Vancouver Community College	1
Westminster Mufflers Ltd.	1
TOTAL	16

cont.

TABLE 12 (cont.)

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER
TO SETTLE A GRIEVANCE UNDER AN EXISTING
COLLECTIVE AGREEMENT DISPOSED OF IN 1985

ANALYSIS OF APPLICATIONS FILED BY UNIONS AGAINST EMPLOYERS	
Number of employers subject to 1 application	260
2 applications	45
3 applications	16
4 applications	9
5 applications	4
6-10 applications	7
11-15 applications	0
more than 15 applications	2
Total employers	343
Total applications	543

TABLE 13

APPEALS DISPOSED OF IN 1985

TYPE OF APPLICATION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
Certification	14	3	4	8	29
Appeal of a certification decision	4	0	0	0	4
Variance of certification	5	1	0	0	6
Cancellation of a certification	2	0	0	1	3
Appeal of a cancellation of a certification	2	0	0	0	2
Variance of accreditation	1	0	0	0	1
Cancellation of an accreditation	1	0	0	0	1
Declaration of successor status	9	0	0	1	10
Appeal of a declaration of successor status	0	0	0	1	1
The disposition of a grievance under an existing collective agreement	3	1	0	1	5

cont.

TABLE 13 (cont.)

APPEALS DISPOSED OF IN 1985

TYPE OF APPLICATION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
Unfair labour practice adjudication	18	4	0	3	25
Appeal of an unfair labour practice adjudication	3	0	0	0	3
Appeal of an appeal of an unfair labour practice adjudication	0	0	0	1	1
A Board ruling re: an interpretation of the Labour Code as it applies to the collective bargaining relationship	7	0	1	1	9
Appeal of a Board ruling re: an interpretation of the Labour Code as it applies to the collective bargaining relationship	3	0	0	0	3
A Board ruling re: more than one corporate entity being considered as one employer	2	0	1	3	6

cont.

TABLE 13 (cont.)

APPEALS DISPOSED OF IN 1985

TYPE OF APPLICATION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
A Board ruling pertaining to alleged illegal strikes, lockouts and/or picketing	8	0	1	1	10
A Board review of an arbitration award	6	0	0	3	9
A Board ruling re: a request to claim damages	1	0	0	1	2
A Board ruling re: collective agreement compliance	2	0	0	0	2
A Board ruling re: a request for an opinion pertaining to a collective agreement clause	1	0	0	0	1
A Board ruling re: religious exemption	1	0	0	0	1
A Board ruling re: altering the terms and conditions of employment	0	1	0	1	2
A Board ruling re: allowing access to an employer's property	1	0	0	0	1
A Board ruling re: collective bargaining obligations	0	1	0	0	1

cont.

TABLE 13 (cont.)

APPEALS DISPOSED OF IN 1985

TYPE OF APPLICATION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
A Board ruling re: essential service designations	1	0	0	0	1
A Board ruling re: submitting grievances for investigation	1	0	0	0	1
A Board ruling re: procedure	9	2	0	3	14
TOTAL	105	13	7	29	154

APPELLANT(S)	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
Employer	51	8	3	14	76
Union	34	3	3	11	51
Employee(s)	19	2	0	3	24
Employer and Union	1	0	1	0	2
Accredited Association	0	0	0	1	1
TOTAL	105	13	7	29	154

TABLE 14

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1985

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION *
A. Dispute settled by an investigating officer or a Panel of the Board			
1. re alleged illegal lockout	5	3	0
2. re alleged illegal strike	23	1	0
3. re alleged illegal strike and picketing	9	2	0
4. re picketing (employer complaint)	20	3	0
5. re picketing (trade union application for a declaratory opinion)	28	2	0
6. re activity affecting business, etc. (S.90)	8	3	0
SUB-TOTAL	93	14	0

cont.

TABLE 14 (cont.)

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1985

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION *
B. Dispute disposed of by a Board adjudication that a violation had occurred or would occur or that a specific activity should be restricted			
1. re alleged illegal strike			
- work stoppage	5	5	1
- refusal to perform certain duties	4	4	3
2. re alleged illegal strike and picketing			
- work stoppage	2	2	0
3. re picketing (employer complaint)			
- alleged ally	2	2	0
- common site	3	3	3
- alleged secondary location	2	2	1
- other	6	6	0
4. re picketing (trade union application for a declaratory opinion)			
- alleged ally	1	0	0
SUB-TOTAL	25	25	8

cont.

TABLE 14 (cont.)

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1985

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION *
C. Dispute disposed of:			
(a) by a Board adjudication that no violation had occurred or would occur or that a specific activity should not be restricted, or (b) by the Board refusing to rule on the proceedings			
1. re alleged illegal lockout	1	1	0
2. re alleged illegal strike - work stoppage	1	1	1
3. re picketing (employer complaint) - common site - alleged secondary location - ally - other	1 0 1 1	1 0 1 0	1 0 1 0
4. re picketing (trade union application for a declaratory opinion) - alleged ally	4	4	2

cont.

TABLE 14 (cont.)

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1985

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION *
5. re activity affecting business, etc. (S.90)	1	1	1
SUB-TOTAL	10	9	6
TOTAL	128	48	14

* In 1983, the Board changed its procedures regarding published decisions. Letter decisions and formal decisions were consolidated into one series. Statistics for 1983 on reflect this consolidated series and cannot be compared with previous years where only formal decisions were considered.

Note: The applications in Table 14 include those filed to avert threatened strikes, lockouts, and/or picketing (through a declaratory opinion, a jurisdictional decision, etc.) as well as those protesting some form of actual job action.

TABLE 15

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1985

INDUSTRY *	FILED BY EMPLOYER(S) **	FILED BY UNION	TOTAL
Manufacturing			
Food & Beverage	2	1	3
Wood Products	21	3	24
Metals (Refining & Fabrication)	1	0	1
Machinery, Transportation Equipment, Electrical Products	4	2	6
Miscellaneous	10	4	14
SUB-TOTAL	38	10	48
Construction	17	7	24
Trade and Service			
Trade	7	10	17
Education & Health	6	0	6
Municipal	0	0	0
Miscellaneous	12	4	16
SUB-TOTAL	25	14	39
Other Industries			
Mining	0	0	0
Transportation	6	9	15
Communications & Other Utilities	2	0	2
SUB-TOTAL	8	9	17
TOTAL	88	40	128

* Based on applicant's type of business.

** Not necessarily the employer of the respondents.

TABLE 16

APPLICATIONS FILED IN 1985 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Boilermakers	4	2	1	2
Bricklayers	2	0	0	1
C.L.A.C.	7	1	0	0
Carpenters	37	48	6	48
Electrical Workers	4	3	4	11
Elevator Constructors	4	0	0	0
Glaziers & Glass Workers	3	4	1	0
Iron Workers	13	9	0	18
Labourers	31	31	8	17
Machinists & Aerospace Workers	8	0	3	5
Operating Engineers	17	10	4	29
Painters	5	1	1	7
Plasterers	7	3	0	2
Plumbers	12	2	3	14
Sheet Metal Workers	11	6	0	5
Tilesetters	0	0	0	1
C.P.U.	2	0	1	1
I.W.A.	19	11	8	11
P.P.W.C.	2	1	4	20

cont.

TABLE 16 (cont.)

APPLICATIONS FILED IN 1985 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
C.U.T.E.	0	0	0	9
Marine Workers	1	0	0	7
Railway Carmen	0	0	0	1
Teamsters	18	22	16	20
Transit Union (ATU)	2	0	0	4
Transit Union (ICTU)	4	0	2	0
Transport & General Workers	5	0	1	3
Western Transportation Union	0	0	0	1
Service Employees	5	4	4	15
Service, Office, Retail Workers	4	0	2	0
Theatrical Stage Employees et al	1	0	1	1
Fire Fighters	1	0	0	1
Police Officers	0	0	1	2
CHAW	1	0	4	3
Hotel Employees	8	26	12	198

cont.

TABLE 16 (cont.)

APPLICATIONS FILED IN 1985 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Health Sciences Association	4	0	4	0
Hospital Employees' Union	3	7	12	6
Nurses	6	0	3	0
Residents & Interns	1	0	0	0
Garment Workers	3	0	0	0
Newspaper Guild	0	0	0	4
Graphic Communication Workers	0	3	3	0
Typographical Union	2	0	1	0
CASAW	2	0	2	0
CAIMAW	3	3	5	9
Energy & Chemical Workers	4	3	1	0
Steelworkers	6	4	2	11
Food & Commercial Workers	10	5	4	35
Retail Clerks	10	9	9	3
Retail, Wholesale Employees	1	0	1	1
Textile Processors, Service Trades, et al	1	0	2	0

cont.

TABLE 16 (cont.)

APPLICATIONS FILED IN 1985 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Bakery Workers	5	1	1	1
Brewery Workers	2	0	2	1
Can. Farmworkers Union	1	3	4	0
Food & Service Workers	2	1	6	0
General Farm & Allied Workers	3	1	4	0
United Fishermen	1	0	1	0
C.U.P.E.	5	1	2	25
O.T.E.U.	9	0	4	8
B.C.G.E.U.	9	2	9	3
Professional Employees	1	0	0	0
Vancouver Municipal & Regional Employees Union	6	0	1	4
A.U.C.E.	0	0	2	0
College Employees Union	0	0	1	1
Faculty Association	0	0	2	1

cont.

TABLE 16 (cont.)

APPLICATIONS FILED IN 1985 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Single Employer				
Independent Union	2	0	0	4
Employee(s)	0	0	*** 154	1
Employer(s)	0	0	20	25
Employer Association	0	0	3	0
TOTAL APPLICATIONS FILED	* 340	** 227	*** 352	**** 600

* Three application were filed jointly, one by the Boilermakers, Carpenters, Electrical Workers, Labourers, Operating Engineers and Plumbers, one by the Labourers, Operating Engineers and Plasterers and one by the Labourers and Carpenters.

** Four applications were filed by unions. One application was filed against two unions, the Operating Engineers and the Labourers holding a joint certification.

*** Includes 149 applications filed by employees against their unions. Two applications were filed jointly, one by the Retail Clerks and the Food and Commercial Workers and one by the Operating Engineers, the Labourers and the Teamsters.

**** Five applications were filed jointly, one by an employer and CUPE, one by an employer and the Operating Engineers, one by the Operating Engineers, the Labourers and the Teamsters, one by CUPE and the Vancouver Municipal and Regional Employees Union and one by the Marine Workers and the Boilermakers.